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Canada. Industrial Relations, Standing Committee, 1947
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SESSION 1947
HOUSE OF COMMONS

STANDING COMMITTEE
ON
INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE & reports
No. 1

WEDNESDAY, JUNE 4, 1947
WEDNESDAY, JUNE 25, 1947

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ORDERS OF REFERENCE

House of Commons,

Thursday, 13th February, 1947

Resolved—That the following Members do compose the Standing Committee on Industrial Relations:—

Messrs.

Adamson,
Archibald,
Baker,
Beaudry,
Black (*Cumberland*),
Blackmore,
Boivin,
Case,
Charlton,
Cote (*Verdun*),
Croll,
Dechene,
Gauthier (*Nipissing*),
Gibson (*Comox-Alberni*),
Gillis,
Gingues,
Homuth,
Johnston,
Lalonde,
Lapalme,
Lockhart,
MacInnis,
McIvor,
Maloney,
Maybank,
Merritt,
Mitchell,
Moore,
Pouliot,
Raymond (*Beauharnois-Laprairie*)
Ross (*Hamilton East*),
Sinclair (*Vancouver North*),
Skey,
Smith (*Calgary West*),
Viau—35.

(Quorum 10)

Ordered—That the Standing Committee on Industrial Relations be empowered to examine and inquire into all such matters and things as may be referred to them by the House; and to report from time to time their observations and opinions thereon, with power to send for persons, papers and records.

Tuesday, May 20, 1947.

Ordered—That the subject-matter of Bill No. 24, An Act to amend the Railway Act, be referred to the said Committee.

Tuesday, May 27, 1947.

Ordered,—That the name of Mr. Knowles be substituted for that of Mr. Moore on the said Committee.

Wednesday, June 4, 1947.

Ordered,—That the said Committee be empowered to print, from day to day, 500 copies in English and 200 copies in French of its minutes of proceedings and evidence and that Standing Order 64 be suspended in relation thereto.

Ordered,—That the said Committee be granted leave to sit while the House is sitting.

Tuesday, June 24, 1947.

Ordered,— That the following Bill be referred to the said Committee:—

Bill No. 338, An Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes.

Wednesday, June 25, 1947.

Ordered,—That the names of Messrs. Jutras, Beaudoin, Lafontaine be substituted for those of Messrs. Dechene, Gingues and Pouliot on the said Committee.

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

REPORT OF THE HOUSE

WEDNESDAY, June 4, 1947.

The Standing Committee on Industrial Relations begs leave to present the following in a

FIRST REPORT

Your Committee recommends:

1. That it be empowered to print, from day to day, 500 copies in English and 200 copies in French of its minutes of proceedings and evidence and that Standing Order 64 be suspended in relation thereto.

2. That it be granted leave to sit while the House is sitting.

All of which is respectfully submitted.

MAURICE LALONDE,
Chairman.

(Concurred in June 4)

MINUTES OF PROCEEDINGS

WEDNESDAY, 4th June, 1947.

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. The Chairman, Mr. Lalonde, presided.

Members present: Messrs. Archibald, Baker, Charlton, Cote (*Verdun*), Croll, Dechene, Gauthier (*Nipissing*), Gillis, Homuth, Knowles, Lalonde, Lockhart, MacInnis, McIvor, Maloney, Merritt and Sinclair (*Vancouver North*).

The Chairman briefly outlined the organizational routines to be considered at this meeting.

On motion of Mr. Knowles—
Resolved,—That Mr. Croll be appointed Vice-Chairman of the Committee.

On motion of Mr. Cote (*Verdun*):—
Ordered,—That permission be sought to print, from day to day, 500 copies in English and 200 copies in French of the minutes of proceedings and evidence of the Committee.

On motion of Mr. Croll:—
Ordered,—That the House be requested to grant leave to the Committee to sit while the House is sitting.

On motion of Mr. McIvor:—
Resolved,—That Messrs. Adamson, Cote (*Verdun*), Croll, Gillis, Johnston, Maybank, and the Chairman ex officio be members of the Steering Committee.

Following a brief discussion, it was agreed that the Steering Committee would consider future procedure.

The Committee adjourned at 10.50 a.m. to meet again at the call of the Chair.

WEDNESDAY, 25th June, 1947.

The Standing Committee on Industrial Relations met at 3.00 o'clock p.m. The Chairman, Mr. Lalonde, presided.

Members present: Messrs. Adamson, Archibald, Baker, Beaudoin, Boivin, Case, Charlton, Cote (*Verdun*), Croll, Gauthier (*Nipissing*), Gibson (*Comox-Alberni*), Gillis, Homuth, Johnston, Knowles, Lafontaine, Lalonde, Lapalme, Lockhart, MacInnis, McIvor, Merritt, Mitchell, Ross (*Hamilton East*), Sinclair (*Vancouver North*), and Skey.

The minutes of the Steering Committee meeting of the 5th of June were read by the Chairman.

On motion of Mr. Cote (*Verdun*), the said minutes were concurred in.

The Committee considered the hearing of representations from interested organizations. The Chairman reported that applications to appear before the Committee had been received from:—

(i) The Canadian Chamber of Commerce.
(ii) The Canadian Congress of Labour.
(iii) The Canadian Manufacturers' Association.
(iv) The Revolutionary Workers Party, and
(v) The New York Central Railroad Company.

Mr. Homuth moved:—

> That interested organizations be invited to file written briefs to be printed in the records of the Committee, and that such organizations be invited to have representatives present at all meetings with watching briefs to answer questions as Bill No. 338 is considered clause by clause.

And the question being put, it was resolved in the negative.

Mr. Mitchell moved:—

That

The Canadian Bar Association;
The Canadian Manufacturers' Association;
The Canadian Chamber of Commerce;
The Railway Association of Canada;
The Canadian Construction Association;
The Trades and Labour Congress;
The Canadian Congress of Labour;
The Amalgamated Unions; and
The Canadian and Catholic Confederation of Labour,

be invited to appear and present, on Monday or Tuesday next, written briefs, and that such briefs be printed in the records of the Committee.

And the question being put, it was resolved in the affirmative.

The Committee considered procedure in regard to the subject-matter of Bill No. 24. Following discussion, it was agreed that a decision be deferred until the Minister of Transport is consulted.

The Committee adjourned at 4.35 o'clock p.m., to meet again at 11.00 o'clock a.m., Monday, 30th June.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

House of Commons,
June 25, 1947.

The Standing Committee on Industrial Relations met this day at 3.00 p.m. The Chairman, Mr. Maurice Lalonde, presided.

The Chairman: Gentlemen, order please. We have two bills before us this year, bill No. 24 and bill No. 338. Following the first meeting of your main committee the steering committee met in my room on the 5th of June. In attendance were Messrs. Adamson, Cote (*Verdun*), Gillis, Johnston and Lalonde. Consideration was given to the procedure and routine to be followed in the main committee and discussion took place on the following:—

1. Consideration of the subject matter of bill No. 24.
2. Consideration of the Labour Code Bill which is now covered by a resolution on the order paper in the House.
3. The procedure to be followed in hearing representatives from organizations and groups interested in the work of the committee.

It was agreed that our recommendations on these points be delayed pending receipt of the bill on the Labour Code. It was also agreed consideration of the subject matter of bill No. 24 and the Labour Code measure be undertaken concurrently. It was further agreed that a meeting of the committee be not called until consideration of the Labour Code bill be undertaken.

(*Sgd.*) MAURICE LALONDE,
Chairman.

I want to put before our committee this question of hearing or discussing briefs presented by outside parties, and I mean labour unions, employers and so on. Up to date I have received representations from:—

1. Canadian Chamber of Commerce, by Mr. G. V. V. Nichols.
2. The Canadian Congress of Labour by Mr Conroy
3 The Canadian Manufacturers' Association by Mr. Willis George.
4. The Revolutionary Workers Party, a communist association from Toronto, submitted by Mr. Ross Dawson.

Mr. Adamson: What address is given there?

The Chairman: 87 King St. W. ,Room 5, Toronto, 1, Ontario.

I also have a fifth representation, from the New York Central Railway Company regarding bill No. 24.

Well, gentlemen, you have to decide the procedure to be followed on that matter. Before going any further we have to decide if, this year, we will hear lengthy briefs or if we will have the briefs printed in the record. Later on, if the members of the committee desire to have further explanations of those briefs, the chairman will be very glad to call on the witnesses so they may appear before us to be questioned by the members of our committee.

The discussion is open on that matter, gentlemen.

Mr. Cote: Mr. Chairman, should we not, before that discussion, agree to concurrence in the report of the steering committee.

The CHAIRMAN: If somebody will move a motion it is in order.

Mr. COTE: I am ready to move concurrence in the report of the steering committee.

Mr. HOMUTH: Just before that motion is made I would ask about the suggestion at the last of the report by the steering committee.

The CHAIRMAN: I did not hear you Mr. Homuth.

Mr. HOMUTH: Was your suggestion in regard to the printing of the briefs considered by the steering committee?

The CHAIRMAN: It has been considered and there has been some discussion on the matter, but it was further agreed it would come before the committee.

Mr. MACINNIS: There is no definite recommendation.

The CHAIRMAN: That is absolutely right.

Mr. ADAMSON: I think, if my memory serves me right, as a member of that committee I recall we decided to leave the matter of hearing briefs to the discretion of the general committee.

The CHAIRMAN: Yes, and the discussion is open on that matter.

Mr. KNOWLES: Before you put the question of Mr. Cote's motion, may I ask what is the meaning now of the last sentence in the report. I believe it was the last sentence which said discussion of bill 24 might wait until discussion of the Labour Code was undertaken.

The CHAIRMAN: Concurrently.

Mr. KNOWLES: That means if we pass this report we will work it out later.

The CHAIRMAN: Yes, whether or not you will take up bill 24 or bill 338.

Mr. KNOWLES: That might be in conjunction with some clause of the bill on the same matter.

The CHAIRMAN: It is up to the committee to decide which of the two bills will be taken up first or if they will be studied concurrently. That is the decision which we arrived at in the steering committee.

Mr. CASE: If we adopt the report of the steering committee we will be deciding it.

The CHAIRMAN: Yes, so Mr. Cote moves, and it is seconded by Mr. Lafontaine, that the minutes of the steering committee be adopted. Is that carried?

Carried.

Now, gentlemen, what about the procedure to be followed on these briefs?

Mr. MACINNIS: I suppose once we get this discussion started it will be hard to stop. It has got to be started sometime, however. The chairman, I think, mentioned that we should proceed—and he can correct me if I am not expressing him accurately—and receive briefs from parties interested in the bill and then, if any member of the committee wanted these organizations or representatives from these organizations to appear before the committee to give further evidence, or to study something further, we could call such witnesses.

The CHAIRMAN: That is my suggestion only.

Mr. MACINNIS: Yes, that is the suggestion that was made. Personally, if I understand that suggestion correctly, I do not think it is a proper way to proceed. We have before us a bill in which many employers, perhaps all employers in Canada, and organized labour are interested, together with individuals or institutions outside of those organizations who may be interested as well. I think we should make it as easy as possible for these people to appear before the committee and say what they have to say and to have the members of the committee question them on any matter that may arise. I think it would be wrong to limit, in so far as unlimited appearances before the committee can be allowed—of course there is a point at which you will have to curtail discussion—but I think it would be wrong for this committee to try and limit representations that are made to it. You must remember this is one of the ways or one of the methods by which the people can make contact with parliament and what is being done by their representatives in parliament, and I think anything that interferes with those contacts is not in the best interests of our parliamentary system of government. Our efforts should always be to bring people as close to parliament as we possibly can. Therefore, I suggest we invite these organizations that have already indicated they would like to appear before the committee and set a day on which we can hear them.

Hon. Mr. MITCHELL: Mr. Chairman, I see on the agenda here that I am scheduled to make a statement. I think I may say that I do not know of any legislation which has come before parliament where there has been more consultation with the interested parties than there has been in connection with this legislation. I include employers, organizations, and trade unions and, of course, provincial governments. This being national legislation I believe that it would be good judgment to deal with those organizations that have a broad crystallization and speak for the membership of those organizations: for instance the trade unions as such—the Trades and Labour Congress of Canada, the Canadian Congress of Labour, the Railroad Brotherhoods and the national syndicates. I think when you have listened to these ranking organizations to whom come the resolutions from all the smaller organizations—they come up to the top and then the general policy is adopted by the national organization and the national organization speaks for all member organizations in legislative matters—that is about as far as we should be expected to go at the moment.

I do not think we should permit this committee to be turned into a political forum irrespective of the source from which material might come. I am not indicating any political party at the moment. On the employers' side you have the Canadian Manufacturers' Association and the Canadian Chamber of Commerce. The Railway Association of Canada would naturally speak for the railways, and the construction industry is the largest basic industry in Canada. I think we should ask for briefs from these organizations to be presented, say, by next Monday; and then, if they wish to give oral evidence, we should hear them. What I am concerned about as an individual—and I am here as an individual, as a member of this committee—is that this legislation find itself on the statute books at this session of parliament, for this very simple reason that all the wisdom is not around this table and we should try out this legislation in practical application as soon as we possibly can; and then test it in the light of experience. Like all other legislation it will need amendment; amendments will be suggested after its practical application from those people who think it should be amended.

There is another organization, Mr. Chairman, which I think we should hear in justice to that organization, and that is the legal fraternity. There is a clause in the bill which they claim from their point of view strikes at the very roots of, might I say, the discussions between the two parties principally interested in this bill. But I would like to point this out, too, if I may, that this legislation (the I.D.I. Act) has been on the statute books since 1907—

Mr. CROLL: But never applied.

Hon. Mr. MITCHELL: That may be true, but I am just giving facts and expressing no opinion one way or another on it. Wait till we hear the evidence of the persons concerned.

I think I may go so far, Mr. Chairman, as to say that we should move with expedition so that this legislation can at this session of parliament become a feature of our national life. I do not think it would be in the best interests of anybody, particularly not of the two great partners in industry or of the general public, if there were any undue delay; and I now answer the suggestion which will probably be made by somebody some time, if there is delay, that the delay is the fault of the government, by saying that I think we must all take our share of the responsibility irrespective of where we sit.

I would impress upon this committee, Mr. Chairman, that we move with expedition, and I make the suggestion that public hearings, if necesary, should commence not later than next Monday; because, don't forget that while there are 78 sections in this bill the points that will be argued can be boiled down to not more than ten, and many of the sections are of routine character such as form part of every bill that is introduced to the House of Commons. However, there are one or two things which, to use common jargon of the day, are fundamental to legislation of this character. But I do ask the members, if it is at all possible, to move with expedition. I leave that suggestion with you.

Mr. Homuth: Mr. Chairman, speaking on behalf of the members of our party, I agree pretty well with what the minister has suggested. If you have these men come here and read their briefs it is going to mean that they are going to be questioned on them. Their briefs are going to cover every clause in the bill and when their presentation is concluded we are going to be just as much at sea as regards the individual clauses because of the amount of material which will be submitted to the committee; whereas if we get printed briefs and read them over, then I would think that as and when the individual clauses are dealt with, as they will be dealt with—and I think the procedure that we might follow here is not to take the bill as a whole but to take it up clause by clause—

The Chairman: Exactly, Mr. Homuth.

Mr. Homuth: —then if there is something in a particular clause which we would like to have clarified from one brief or another someone should be here to do that for us. Surely these organizations are big enough to have someone here with a watching brief who would be available at all sittings of the committee so that if questions arise they can be answered. If clarification is needed of any point that develops in the brief they would be here and available for that purpose. If we can do it that way then I think we will be able to get the bill through this session. I think there is a lot in what the minister says. If we can get this bill through and get it at work we can find the things that are wrong with it, and that is the only way you can really test legislation of this sort. Then next session if there are a number of amendments required those amendments can be considered.

The minister mentioned four labour organizations. Now, there is another labour organization, and it is true that up to the present time it has not found much favour with the other union organizations, but it does represent tens of thousands of workers across this country and that is the Amalgamated Unions.

The Chairman: Which one?

Mr. Homuth: The Amalgamated Unions. There is no reason whatever why organizations of that kind representing a large number of employees, as they do, should not also be asked to sit in when we are studying this bill. And if that is done, speaking for our group here, I think we are quite agreeable to follow the procedure of having the briefs printed in our Minutes of Evidence; and then let us deal with the bill clause by clause; and if something requires clarification there will be somebody here to do that when required.

The Chairman: Will you put that in the form of a motion, Mr. Homuth?

Mr. Homuth: I would so move.

The Chairman: Seconded by—?

Mr. Ross: I would second that motion.

The Chairman: Mr. Homuth, would you mind putting that in precise form for the benefit of the record? It is moved by Mr. Homuth, seconded by Mr. Ross—

Mr. Homuth: That briefs be submitted to the chairman and be printed in the Minutes of Evidence of this committee, and that we suggest to these organizations submitting briefs that it would be well for them to have someone here with a watching brief so that as we deal with this bill clause by clause they will be available to answer any technicalities that may require clearing up as the need arises.

The Chairman: What are the names of the respective organizations who are to be requested to submit briefs?

Mr. Homuth: You have them before you, I believe.

The Chairman: Yes. I received only five suggestions. I understand that you suggest another one, the Amalgamated Unions.

Mr. Homuth: I would not put that in the motion because the minister knows who the organizations are and he could be trusted to look after that.

The Chairman: What is your pleasure, gentlemen?

Carried.

Mr. Croll: Just a moment, Mr. Chairman.

Hon. Mr. Mitchell: I want to say that when I mentioned those eight organizations I just mentioned them as suggestions, but you know a committee of this description, as I said before, we do not want to throw this into an open forum for every organization to come here and take up endless time discussing these matters. We are here speaking for the people of Canada; we have to do the work ourselves.

Mr. Croll: Mr. Chairman, would you repeat the motion, please? I do not think it is exactly what the committee had in mind. As I recall it, the suggestion by the minister was that these organizations be invited to file briefs and that they be heard on the briefs.

Some hon. Members: No.

Mr. Croll: That is what I understood.

Some hon. Members: No.

Mr. Croll: Well then, now we understand each other. In speaking to the motion, I think we are making a mistake unless we hear these people on the briefs they submit to us for very special reasons. We might very well limit them to a definite time, and say we will give them 15 minutes, 20 minutes, whatever the committee may decide, in which to make their presentation. It may be difficult for us to get the exact meaning of what is contained in their briefs. This bill 338 is of great importance at the present time. It is important because this is our first attempt at a national labour code of any sort; and as this may well be the cornerstone for labour codes that may follow and may be followed in many provinces of the dominion, I feel that they are looking to us and we have to give them a particularly good example. For this reason we should hear these people. It will not take so very long. I appreciate that there has to be a limit. We have a great deal of literature thrown at us. We have not an opportunity of reading it all. But, as the minister has pointed out there are ten or perhaps fifteen clauses here which will be controversial while with the rest of the bill I suggest we will not have much difficulty. Consequently we ought to hear these people about those clauses. What may be of interest to one or two may not be of interest to others. One may object to clause 55 and another may object to clause 73, but it is important that we hear everybody who wants to be heard; and that is something that we will not be able to do if we have the briefs simply filed. In my opinion this matter is of far too great importance merely to have briefs filed, and I do not think that either the labour organizations or the other organizations will be satisfied with the mere filing of a brief. That might speed up procedure a bit, but at the same time I feel that we would be making a mistake unless we hear these people and hear their story; if any of them have considerable differences with the bill, and I believe they have judging by information which has come to my notice so far. In any event, they ought to be heard.

Then, Mr. Chairman, I have another suggestion to make. In view of the wide public interest in this bill I suggest that you try to get the railway committee room again. We have people standing in the back of the room here, and I do not think it is in the interests, particularly of this committee, not to have adequate accommodation for people who will come here.

The CHAIRMAN: With the permission of the committee I would like to call attention to this. I do not want to commit the committee with respect to procedure, because I have no right so to do; but I think it is my duty to point out to the committee the right way to proceed and that I intend to apply the rules as they appear in Beauchesne, more particularly standing order No. 76, subparagraph 774, which reads:—

> Each clause is a distinct question and must be separately discussed.

We cannot do otherwise, or we will not be able to make any progress. We must keep within the rule. That is just my own personal viewpoint. I suggest that if I, as chairman, were to allow discussion to take place when a brief is presented, such discussion would apply to the whole bill and we would not be able to follow the rules as they apply to our committee.

Mr. CASE: Then we will be here till Christmas, Mr. Chairman.

The CHAIRMAN: The question of time, gentlemen, is very important. May I recall to the committee the excellent work it did last year, and tell the members that I expect them to live up to the high standard set at that time. May I point out that if I do not apply the rules strictly I will be in a most difficult position. At the same time I do not want to curtail discussion or freedom of speech on the part either of members of the committee or those appearing before the committee. May I point out that I am making this statement merely as a suggestion; I am not expressing an opinion at all. My point is this, that if we are to make any reasonable degree of progress we must adhere strictly to the rules. And if we proceed with the discussion of the bill clause by clause, I take it there will be no general discussion of the principles of the proposed legislation.

Mr. MACINNIS: Mr. Chairman, I do not want to give the idea that I thought the chairman had any sinister motive in mind when he made the suggestion. I just came to the conclusion he must have formed an opinion before he made the suggestion. There are two things, I think, we have to keep in mind in relation to this bill. First of all, we passed the bill through second reading in the House—that is when we had an opportunity to discuss the principle of the bill—on the understanding that the bill was going to committee and that there would be opportunity for discussion here.

The point I want to make is this: when we hear the persons who want to be heard, if we are going to hear them, it will be before the committee itself begins discussion of the various sections of the bill. When the committee begins discussion of the sections of the bill, if we hear representatives from outside organizations, we will have those representations in mind. It will not be either desirable or necessary, in my opinion, to have anyone from outside when we are considering the various sections of the bill. If we decide to hear from outside organizations we will have heard their opinion before that and we will have finished with them. I suggest to this committee, in all seriousness—

Hon. Mr. MITCHELL: You are suggesting we should hear the representations from the organizations first and then discuss the bill?

Mr. MACINNIS: Before we discuss the clauses. I wish to suggest to the committee in all seriousness, if you refuse to hear any organization which wishes to appear before this committee with a brief and state its point of view—

Mr. Homuth: I am rising on a point of order, Mr. Chairman. My motion does not convey that at all. My motion calls for the hearing of these different people on the various clauses of the bill. We are not going to stop them from being heard; we are going to give them a better opportunity to be heard. They can discuss the various clauses of the bill when we are discussing them. Some clauses may not evoke any discussion at all while others may need a great deal of discussion. It would be far better for them to be here during the discussion of the clauses than to present a whole brief and then be ruled out during the discussion of the clauses.

Mr. MacInnis: That would be a matter upon which the committee should decide. I think it would be a wrong procedure to have representatives of the manufacturers' association and the Canadian Chamber of Commerce here all the time we are discussing this bill, as well as six or seven labour organizations, each wanting to take part in the discussion of a particular clause. I think that would be a wrong procedure. However, if those organizations—for instance the Chamber of Commerce—want to make a presentation to this committee they can only deal with the principle of the bill as they feel it affects them or as they feel it affects the country. It would be absolutely wrong to refuse to hear them.

I do not know of any committee which when they were dealing with a bill had representatives in when discussing the various clauses. That is something for this committee to decide after we have heard the representations from the outside organizations.

Hon. Mr. Mitchell: You spoke of, "any organizations"?

Mr. MacInnis: I was going to modify that. As this is legislation affecting national organizations or organizations of industries that are inter-provincial, organizations which are covered by provincial legislation, local unions would not want to be heard.

Hon. Mr. Mitchell: That is what I was going to point out.

Hon. Mr. MacInnis: I am in agreement.

Hon. Mr. Mitchell: Taking it a step further to make sure we know where we are going, here is the Revolutionary Workers Party, the Trotskyites. They do not represent any trade union, so far as I know. There is this danger. Let us be sure we know where we are going. I have read a press release by the Labour Progressive Party which tore me to bits and did not quite put me together again. I do not know why we should listen to them.

In effect, do we not represent the general public being members of parliament and of the government? Now, in effect, does not our committee protect the public interest? Is not that what we are elected for? Do not the national trade union bodies, in effect, represent a broad crystalization of the organizations affiliated with them? On the other side of the fence, do not the national organizations of employers, in effect—the four I have mentioned here—have their annual convention. They should know what the desires and approaches of their respective organizations are to this form of legislation.

Now, I think that should be the set-up. I agree with Mr. MacInnis that you cannot have local unions in here because once you start that you will have to hear the five or six thousand local unions in Canada. If everyone who wants a soap box is going to be heard by this committee, it will be in session until the next session of parliament.

Mr. Gillis: Has this become a two man conference?

Mr. MacInnis: I do not think that is a necessary remark. May I ask the minister a question? How does the construction industry come under this legislation? Is not that industry concerned with provincial labour legislation?

Hon. Mr. Mitchell: They are, but I say that for this reason: they have a national organization and many of their people are engaged in works over which we have jurisdiction It is probably one of the oldest associations in the

Dominion of Canada and probably has had as much experience in employer-employee negotiations as any other group of people of whom I know in this country. I thought their advice might be of some help to us.

Mr. Gillis: Mr. Chairman, this committee has a serious responsibility. That is the first thing I should like to impress upon the committee. If you look at conditions in the world to-day you will find a concerted effort on the part of a certain organization—I am not going to name it—to interrupt the industrial life of every country with one end in view. So long as you leave industrial relations in this stage, where it is a matter of drawing fine lines of responsibility and so forth, you are going to make it possible for that machine to manipulate the workers of this country or any other country as they are being manipulated to-day.

Now, as I understand it, it was decided last night by adopting the bill that a national labour code in this country was a desirable thing. It is now the responsibility of this committee to determine whether we are in a position, constitutionally, to enact a national labour code under the B.N.A. Act. Personally, I do not think we are. This bill, so far as I am concerned, can be passed by the House. The amount of discussion you get on it is immaterial; the amount of evidence you take is immaterial; the amount of time you take is immaterial unless the members of this committee are prepared to say that, in order to make this national labour code effective and all-embracing across this country we are prepared to go back to parliament and say we are going to fight for changes in the B.N.A. Act. Unless we do that we are wasting our time and continuing the possibility of agitation and interruption in the industrial life of the country.

Industrial relations are human relations. Seventy-five per cent of the workers of this country, because of their standard of education and so forth are subject to manipulation. The minister knows that, I know it, and so does Mr. MacInnis. They can be taken for a ride by one-half of one per cent of the membership within an organization on any kind of a tangent, unless there is some real law applied. You see at the present time in the United States further restrictive laws are being imposed and these restrictions have instituted an epidemic of upheavals. Strikes are developing all across the country. France is affected. Every country where there is any freedom is affected.

I am not worried about the time this may take. I feel that the most important job I can do now or in the future, for history and for posterity, is to evolve some rule of law under our democratic system which will not permit these people who have not had the advantages of an education to be taken for a ride by those who want to manipulate them for certain ulterior purposes.

Now, I do not think this is a national labour code. I say it is not possible to enact a national code under the B.N.A. Act with your provincial jurisdictions. This is a national labour code only in the sense it embraces certain national organizations over which the federal government has jurisdiction.

The Chairman: I am sorry to interrupt you, Mr. Gillis, but I would suggest to you that the motion before the committee now does not deal with the merits or demerits of the fundamentals of the bill.

Mr. Gillis: It deals with hearing of outside representatives, does it not?

The Chairman: It deals with the procedure to be followed and I would be very glad to hear you on that matter.

Mr. Gillis: That is exactly the point I am making. The argument advanced has concerned the amount of time which might be involved in bringing representatives before this committee to give evidence on the enactment of this bill.

The Chairman: We all agree.

Mr. Gillis: That is the point of argument. What I am trying to tell you is this: no matter how much time we spend on this bill or how many people we hear in connection with this matter, it is going to be an education to them and to us by giving them an opportunity to come and get some idea of the mechanics of democracy. It will enable us to evolve some kind of machinery to prevent what is happening over in the United States.

I have that point in mind. I do not like to try to fool people. I do not think the minister does and I do not think the chairman does either. I do not like to kid anybody that we are passing an all-embracing national code. We are not. We are passing an Act which gives jurisdiction in the few cases over which the federal government has jurisdiction. Personally, I should like to see it all-embracing; I should like to see it take in every industry in Canada; but evidently we are not prepared to go that far at the present time.

I am going to seriously suggest, Mr. Chairman, that personally I do not think you are going to pass this bill at this session. I am convinced of that. I would seriously suggest this; that the Department of Labour, not this industrial relations committee, advertise the fact that this committee is going to be in session for the purpose of studying this bill clause by clause and any interested body in this country which wants to present evidence to it has the privilege of submitting a brief or sending a representative here. If this means carrying it over to the next session of parliament, that is all right. Then, when we do bring down something by way of a national labour code it will be comprehensive and will represent the viewpoint of the majority of the people of this country who really want something in the way of national legislation in effect.

As I started to say in the first place, Mr. Chairman, do not forget that on this very question of industrial relations, this question of employer versus employee, rests the future of civilization. There is no other point in this country or any other country at which our system can be so disrupted, twisted, mixed up and moved by our communist friends who are out to do that with all the techniques at their disposal, as in this field of industrial relations. Across this country today we have legislation like this provincially. It is working. It is ineffective in many respects but in this field of national endeavour if we are going to do anything at all we should at least study the matter very carefully, get opinions from every source and not rush it through. I am convinced that if you pass that bill as it is at the present time you will be further back than you were in 1907 when the old Lemieux Act was passed because it means nothing nationally. Even the old Lemieux Act in 1907 designated certain industries as national industries across this country.

The CHAIRMAN: I am sorry—

Mr. GILLIS: This bill does not do it at all.

The CHAIRMAN: I have to interrupt a second time to put the motion before the committee. Later on you will have a full opportunity to speak on these very important matters.

Mr. GILLIS: I am talking now on the matter of representation.

The CHAIRMAN: It is moved by Mr. Homuth, seconded by Mr. Ross (Hamilton, East) that the interested organizations be requested to file written briefs to be printed in the committee's records, that such organizations be requested to have representatives present at all meetings with watching briefs to answer questions as the bill is considered clause by clause. That is the motion before the committee. I would suggest that members stick to it, have a discussion on it and a vote if it is the desire of the committee.

Mr. ADAMSON: May I suggest that you change the word "requested" to "invited". I do not think we can request anything.

Mr. BEAUDOIN: Question.

Mr. GILLIS: I am sorry if I went a little beyond the scope of things but let us not try to fool ourselves.

The CHAIRMAN: You will have a full opportunity later on to speak on these matters.

Mr. GILLIS: I was talking about the seriousness of this question and the timing of it, and you cannot do that in four words. We should not fool ourselves that we would be passing a national labour code.

Mr. ROSS: Speak for yourself.

Mr. GILLIS: I am talking for you, too.

The CHAIRMAN: Order, please. There is a motion before the committee. Those in favour?

Mr. GILLIS: Mr. Chairman—

Hon. Mr. MITCHELL: I should like to say a word.

Mr. GILLIS: May I conclude by saying that I do not like that word "interested." I should like to have that word "interested" changed to the word "desire", any organization which desires to present a brief to be—

The CHAIRMAN: To be invited.

Mr. GILLIS: To have the privilege to appear before the committee.

Mr. GAUTHIER: That is a play with words.

Mr. HOMUTH: If they desire then they are interested.

Mr. GILLIS: No, there is quite a bit of difference. The Manufacturers Association will be terribly interested. There are a lot of labour organizations that will desire to come here and may not be in the financial position to do so. That raises another question. If they send in requests to present briefs then it is a matter for this committee to decide how they are going to be brought here. I would urge, after giving a lot of consideration to this matter, that we do not rush it, and that we give the widest possible opportunity for labour organizations on the outside to come here to meet this committee and present their views. Let us clarify the mechanics of democracy because they are certainly not being clarified today. Every piece of machinery than can obstruct, misconstrue and obscure the things we are trying to do is in effect today, and this is the one clearing house where we can get people here and clarify the ideas we have in mind.

Mr. McIVOR: I want to ask a question. Will we get these briefs first before those who will present them appear before the committee? I am a little bit slow in my thinking. I like to read things twice. I think I have read this bill twice, and some parts of it oftener. I should like to read the briefs first. Then I think I will understand it better when the personalities connected with these briefs appear here. I think we should stick to our rules as closely as possible. Mr. Gillis has tried to convince us that this is a great question, but I do not need anybody on the committee to convince me of the importance of it because I am already convinced. It is a burning question. I think the less we say and the more we do the better.

Hon. Mr. MITCHELL: Before you put the motion, on second thought I think the best thing to do is to let these people read these briefs. I think it is best to let them read the briefs because we may run into this situation that if these briefs are filed they are a matter of record, of course, for the benefit of our good friend Mr. McIvor, but if we are going to start an argument you have different people representing nine or ten organizations who are going to present views. If they are going to present their arguments every time there is a disagreement in the committee it may be that this situation will arise. Mr. Johnston of Alberta may say to somebody, let us say Mr. Conroy. "What is your opinion on this section of the bill"? He expresses his opinion, and then naturally some other member says to somebody else, "What is your opinion?" It does seem to me that the best thing to do is to let them read their briefs and get them out of the way. We are grown-up men and we can then make up our minds.

Mr. Homuth: I am not withdrawing the motion because I can see that these people are going to come here and read these briefs, and while they are reading the briefs they are going to be asked to clarify certain parts of the briefs. When the bill is before the committee clause by clause are you going to say to these people, "No, you are through; you cannot come in and explain a clause." This committee may want some enlightenment on a certain clause or a certain organization's ideas on a clause. Are you going to say to them, "You cannot come in; you are through when you have submitted your brief." I am not going to withdraw my motion.

The Chairman: I will answer Mr. McIvor's question. If the motion is adopted my intentions are to send the briefs to the printer as soon as they come in so that the members of the committee will have every opportunity to read those briefs in the record the next day after I receive them. It is moved by Mr. Homuth, seconded by Mr. Ross (Hamilton East) that interested organizations be invited to file written briefs to be printed in the committee's records, that such organizations be invited to have representatives present at all meetings with watching briefs to answer questions as the bill is considered clause by clause. Those who are in favour of the motion raise their hands. Those who are against raise their hands. The motion is defeated.

Mr. Homuth: What was the vote?

The Chairman: Fourteen to nine.

Mr. Gillis: Let me clarify that in my own mind. My understanding is that if any organization wants to submit a brief they submit it.

Mr. MacInnis: The motion is lost.

Mr. Gillis: I voted for the motion and I want to understand it. They submit a brief. If they want to send a representative here for the purpose of filing that brief in connection with the bill they are privileged to do that as it is taken up clause by clause?

The Chairman: We will follow the same procedure we followed last year. If any organization comes here with a brief their representative will be permitted to read it.

Mr. Homuth: Are we to understand that there is no limitation as to the organizations that may present briefs here?

Mr. Croll: That is not the point at all.

Mr. Homuth: I want to find out. In view of this motion being defeated is there going to be any limitation as to who is going to be allowed to present a brief here and read that brief to this committee.

The Chairman: I think that the steering committee has the duty to screen the different briefs and leave out those that may not be pertinent to the subject matter before the committee.

Mr. Homuth: Just like you do the immigrants.

The Chairman: For the sake of argument let us suppose that an organization comes in with a brief that has nothing to do with the labour code. Then the steering committee has the right to refuse that brief.

Mr. Homuth: There is not an organization in this country that has not got something to do with the labour code because that labour code is going to affect everybody in the Dominion of Canada.

Mr. MacInnis: Mr. Chairman, may I try to straighten out this question. This committee will decide whom it is going to hear. All applications to appear before the committee will go to the steering committee first.

The Chairman: That is right.

Mr. MacInnis: And the steering committee will review them. This committee should have sufficient intelligence to say whom it will hear and not hear.

The Chairman: As we did last year.

Mr. Case: You read from the rules of procedure. As I understand it now even though they appear personally and present their briefs they cannot be cross-examined on the brief.

Mr. Croll: Yes, they can.

The Chairman: They may be.

Mr. Case: The rule is there. You say they must be cross-examined on the clauses. I want that clarified as to whether a witness may be cross-examined on the brief.

The Chairman: Surely they can be cross-examined, but as I told you before I do not know what I will do with the rules of the committee. That will be left to the wisdom of the chairman, but I will surely not permit our committee to get in a mess by throwing away the rules of the committee. Later on we will see how things go.

Mr. Case: What does the rule provide?

The Chairman: The rule is very clear. I will read it to the committee. Standing order 76 applies to our committee.

Paragraph 774 reads:—

> The bill is considered clause by clause. The Chairman usually calls out the number of each clause, and reads the marginal note but he should give the clause at length when it is demanded by the committee. Each clause is a distinct question and must be separately discussed. When a clause has been agreed to it is irregular to discuss it again on the consideration of another clause.

Mr. Case: There is really no rule with respect to witnesses at all.

Mr. Archibald: I have one question. Is this the way it is going to work? We will send out an invitation to various groups to present their briefs. Then the individual briefs come before the steering committee.

The Chairman: That is right.

Mr. Archibald: Then the steering committee will pass on whether a particular brief will be heard and presented by the representative of that organization to the committee?

The Chairman: Right.

Hon. Mr. Mitchell: To get the thing started I should like to make a motion. I move that the following organizations—and I have mentioned them before—the Trades and Labour Congress of Canada, the Canadian Congress of Labour, the Railroad Brotherhoods, the National Catholic Syndicates, the Amalgamated Unions, and the Canadian Manufacturers Association, the Canadian Chamber of Commerce, the National Construction Association and the Railway Association of Canada be invited on Monday and Tuesday next to present briefs orally or written for incorporation in the records of this committee.

Mr. Adamson: Would you include the Canadian Bar Association?

Hon. Mr. Mitchell: Yes.

Mr. Croll: In the first place, if I may speak, I think you ought to take the word "orally" out of the motion. It is too difficult for the committee to have a full discussion without a brief. There has been enough time for preparation and it is difficult enough even with a brief.

Hon. Mr. MITCHELL: I will tell you what I was thinking. There may be some organization which does not want to present a brief orally and they would perhaps just want to file it.

Mr. CROLL: Well these oral presentations are not fair to the committee and they ought to present briefs.

Mr. HOMUTH: Mr. Chairman, there are some organizations that have not had enough chance to study this bill.

Mr. CROLL: They have had longer than you and I have had.

Mr. HOMUTH: Yes, but I am advised the Canadian Manufacturers' Association is not in a position to submit a brief on Monday or Tuesday.

Mr. CROLL: Well they have had the matter before them for six months.

Hon. Mr. MITCHELL: If I knew anything about labour relations I could sit down tonight and prepare a brief in two hours.

The CHAIRMAN: Shall the motion carry?

Mr. ADAMSON: Just one thing before you come to that, one matter of clarification. When we hear these briefs that are submitted in writing, will these representatives have the option of submitting them orally, that is have their representatives file or read them.

Hon. Mr. MITCHELL: File them or read them, yes.

Mr. ADAMSON: That is optional. When this committee goes over the bill clause by clause, it will be the responsibility of the committee to pass on or reject the clauses without outside assistance.

Hon. Mr. MITCHELL: Yes.

Mr. CROLL: I think perhaps the inclusion of the law society may be a mistake, if you will take a look at section 2. I think there are enough lawyers here who will be able to look after their interests.

Mr. MACINNIS: Hear, hear.

Mr. CROLL: We are all in favour, naturally, of having them struck out of the code but you also exclude medical, dental, and architectural professions from the word "employee" and it is for that reason I am objecting. I do not think it is necessary.

The CHAIRMAN: As a matter of fact I think they are here.

Mr. CROLL: Who?

The CHAIRMAN: Representatives of the bar association.

Mr. CROLL: It seems to me we are opening the door to others who may come along.

Mr. CASE: Yes, if you say the lawyers here are speaking for the law society.

Mr. CROLL: I do not think there is any objection to having them taken out of the code. As Mr. Hackett told the House last night, it is in the interests of the people generally to have the clause with respect to lawyers removed from the section in any event, because it has not been in effect since it was passed, and it is there for no good purpose.

Mr. CASE: There was a solution passed by some dental society, was there not?

Mr. GILLIS: In the interests of procedure is it the intention of this committee to hire counsel?

Some hon. MEMBERS: No, no.

Mr. GILLIS: The reason I ask that is that this committee has to decide on a national labour code. It is within the province of our present constitution to establish a national labour code? You have got a lot of lawyers on the committee but they are all politicians. I think in the best interests of the committee it might be well if this committee had legal counsel, someone who could render impartial decisions without looking for votes. Of course I am not very sure we can do this. I would like to find out, because I do not like to be unconstitutional. The minister's department of course, has a lot of legal counsel and he could bring in somebody to give us legal opinions.

Hon. Mr. MITCHELL: I want to say that with respect to the constitution of this bill I do not need any assistance from any lawyers.

Mr. ROSS: Hear, hear.

The CHAIRMAN: Order, order.

Hon. Mr. MITCHELL: I will see to it that we have some good legal counsel here to advise the members of the committee. Last year the situation was entirely different; that was an enquiry. This is not an enquiry; it is the consideration of a bill. We had a lawyer, Mr. Robinette, rather than the members of the committee, to question the witnesses, but it did not make any difference; you asked your questions anyway.

Mr. SINCLAIR: Last year you had a departmental lawyer. Instead of hiring an outside lawyer why could you not have a departmental lawyer come in.

Hon. Mr. MITCHELL: I will have one there.

The CHAIRMAN: There is a motion by Mr. Mitchell—

Mr. CROLL: I will second it as long as you will take out the word "orally".

The CHAIRMAN: —seconded by Mr. Croll that the Canadian Bar Association, The Canadian Manufacturers' Association, The Canadian Chamber of Commerce, The Railway Association of Canada, The Canadian Construction Association, The Canadian Trades and Labour Congress, the Canadian Congress of Labour, The Amalgamated Unions, and the National Catholic Syndicates be invited, on Monday or Tuesday next, to present written briefs, and that the briefs be printed in the records of the committee. Is the motion carried?

Carried.

Well I think, gentlemen, that is all for today.

Mr. HOMUTH: Mr. Chairman, may I ask this. Is bill 24 going to be dealt with at any time or are we going ahead with the other bill first? Is bill 24 to be delayed until after the other bill?

The CHAIRMAN: It is up to the committee to decide. If the committee wishes it may go on with bill 24.

Hon. Mr. MITCHELL: I think that might be left to the steering committee. It is Mr. Chevrier's bill and he is away at the moment.

Mr. KNOWLES: I suggest that the steering committee consider the matter of bill 24 in the light of the possible relationship between it and one or two clauses in the labour bill. I think that was the reason for delaying the discussion of it until this bill was before us, to see whether or not the effect desired by bill 24 could be achieved by the clauses that are now in bill 338, or possibly, by amending those clauses. I note particularly subsection (2) on page 3, also section 4.

Mr. CROLL: Which section of the section have you reference to on page 3?

Mr. KNOWLES: Subsection (2), "no person shall cease to be an employee within the meaning of this Act by reason only of his ceasing to work as the result of a lock-out or strike or by reason of dismissal contrary to this Act".

In my own view, not speaking as a lawyer, I do not think it covers it; but it comes very close. Then there is a clause on the next page, page 4, clause (*b*) of subsection (2). I am not entering into an argument on the matter at the moment, I am just suggesting the steering committee should decide whether bill

24 should be dealt with entirely by itself or in relation to certain clauses of the code.

The CHAIRMAN: The steering committee dealt with this at its meeting and it has been left to the wisdom of the whole committee.

Mr. KNOWLES: At that time the committee did not have before it bill 338.

The CHAIRMAN: I wonder if the steering committee has authority to decide whether your bill can be incorporated in bill 338 or if bill 338 has something to do with the principle of your bill. I think it would be wise to leave that matter to the wisdom of the whole committee.

Mr. KNOWLES: I was suggesting that the whole committee could, by a motion, refer that point back to the steering committee, to reconsider it in the light of bill 338.

The CHAIRMAN: I am afraid the steering committee has only jurisdiction in relation to the procedure to be followed by the whole committee. We have no authority in the steering committee to decide whether your bill has something to do with the other bill and vice versa. I think that is a matter that can be left for a decision by the whole committee later on.

Well, gentlemen, our committee will meet next Wednesday.

If the committee, on the other hand, desires to go on with the Labour Code right away, without hearing the briefs, I am quite ready to call a meeting tomorrow, but in the light of the procedure you have adopted I think we have to wait for the briefs.

Mr. HOMUTH: Yes, there may be certain information in the briefs which would affect our interpretation and dealing with the clauses. I think we should wait for the briefs because there may be something in them that would affect our consideration.

Mr. GILLIS: We cannot leave this question raised by Mr. Knowles up in the air. At the last meeting of the steering committee that I attended we decided to leave this bill in abeyance pending receipt of the national code from the House. While it is not the responsibility of the steering committee to decide legislation I think this is a matter of procedure; and I am going to move, Mr. Chairman, that the matter of bill No. 24, and its relationship to this national labour code be referred back to the steering committee for advice and that it be reported back at the next meeting of the main committee.

Mr. KNOWLES: Is that for advice as to procedure?

Mr. GILLIS: As to whether we should include that bill in the national labour code, or whether Mr. Knowles should take it back to the House or move again in the House that it be referred directly to this committee, thereby giving this committee the definite responsibility of dealing with it.

The CHAIRMAN: Do you mean the whole committee?

Mr. GILLIS: Yes. What I am suggesting is that not all the brains of this committee are in the steering committee.

The CHAIRMAN: You mean that this bill should be dealt with by the main committee?

Mr. GILLIS: I think the steering committee should decide whether it should be considered separately or whether it should be considered only as a part of the other bill.

Hon. Mr. MITCHELL: Now you have raised a question which involves a matter of opinion; and as you know, I am always frank about matters of that kind. This bill refers to working conditions; and, of course, that raises the matter of personal convictions. I think my convictions on matters of this kind are pretty well known. I suggest this to you; this particular bill is one in which the Hon. Mr. Chevrier is interested and I think we should wait until he gets back, which will be to-morrow or the next day.

Hon. Mr. MITCHELL: As I understand the matter the suggestion is this: The railways of the country are interested in this bill and they will have representatives coming here. The American railroads operating in Canada also have an interest in it. No doubt the Canadian Railway Association, and I presume the Brotherhoods also, will want to make representations. I think we could let that stand until we reach that point on the other bill. Then, if this committee feels in its judgment that it should be a part of this legislation (national labour code), and if the House of Commons agrees, there you are; that is the end of the story. But I think we should certainly wait until Hon. Mr. Chevrier gets back here.

The CHAIRMAN: Just along that line, Mr. Gillis, I know that Hon. Mr. Chevrier wants to have evidence given by officials of his department who will appear before the committee in connection with Mr. Knowles' bill. I think just as a matter of courtesy, if nothing else, we should wait until Mr. Chevrier is back, which will be within a few days.

Mr. GILLIS: I am not rushing the matter at all. All that I was concerned about was that the House passed the bill to this committee to consider. It went to the steering committee for their consideration. The matter has been raised here again. We did not make any decision but rather left it up in the air. If it is the opinion of the committee that we should wait a week, two weeks, three weeks, that is entirely satisfactory to me. We will have to make some decision on it.

Mr. KNOWLES: Mr. Chairman, I would suggest in view of the opinions which have been expressed on the matter that this main committee take the bill up a mutually convenient time; and by mutually convenient time I have in mind the convenience of Hon. Mr. Chevrier and others; but in making that suggestion I would just like to have one thing clearly understood, that we do not necessarily have to wait until we have finished with bill No. 338. If there is a date convenient to all concerned, the next week or the week after, or at a point where it may be practical to intervene in the consideration of bill No. 338 to revert to bill No. 24—if that is understood I will be quite satisfied.

Mr. CROLL: It seems to me that it is going to take a lot of time for people to present their briefs on bill No. 338 and that we may have another group who want to make representations on bill No. 24. It is quite possible that they will want to submit separate briefs. Then, too, Hon. Mr. Chevrier is away. Possibly on Monday we could start hearing representations with respect to your bill (bill No. 24) and perhaps we will be able to take care of that before going on with the larger bill (bill No. 338).

Mr. KNOWLES: Unfortunately, I will be away on Monday.

Mr. MACINNIS: In regard to bill No. 24, it is not the department which is interested in it, it is the railroad brotherhoods who are interested in it; and they are going to appear before the committee. When they make their representations to the committee they can also make representations on the other bill. The railway associations are to appear, they are interested, so they could make their representations on bill No. 24 as well, and then we can have the picture right through.

Mr. KNOWLES: Well, they are being invited here to make representations on bill No. 338, and we will have bill No. 24 before us.

The CHAIRMAN: I think we should await the return of Hon. Mr. Chevrier before going ahead with bill No. 24.

The committee adjourned at 4.33 p.m. to meet again on Monday, June 30, 1947.

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Canada. Industrial Relations, Standing Cttee on, 1947

SESSION 1947
HOUSE OF COMMONS

Law R.R.

STANDING COMMITTEE ON
INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 2

MONDAY, JUNE 30, 1947

WITNESSES:

Mr. L. A. Kelly, K.C., Canadian Bar Association;

Mr. Pat Conroy, Secretary-Treasurer, Canadian Congress of Labour.

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MINUTES OF PROCEEDINGS

MONDAY, 30th June, 1947.

The Standing Committee on Industrial Relations met at 4.00 o'clock p.m.

The Clerk reported that the Chairman, Mr. Lalonde, could not attend, whereupon the Vice-Chairman, Mr. Croll, took the Chair.

Members present: Messrs. Adamson, Archibald, Baker, Beaudoin, Cote (*Verdun*), Croll, Homuth, Johnston, Jutras, Lafontaine, Lapalme, Lockhart, MacInnis, Maloney, Maybank, Merritt, Mitchell, Viau, Timmins.

The Chairman stated that several telegrams had been received in protest of the decision to hear only a limited number of organizations, and that insufficient notice had been given to the organizations invited to appear.

It was agreed that the steering committee would meet following adjournment of this day's meeting to consider these representations.

Mr. Lee A. Kelley, K.C., representing the Canadian Bar Association was called. He made a statement, filed a brief which was taken as read, and was questioned.

The Witness was retired.

Mr. Pat Conroy, Secretary-Treasurer, Canadian Congress of Labour was called. He read a brief and filed a paper intituled "Detailed Comment on the Industrial Relations and Dispute Investigation Bill. (Bill 338)". It was agreed that this paper be printed in the records of the Committee. (*See appendix "A"*).

Mr. Conroy informed the Committee that a second supplementary paper, in course of preparation, would be filed within a few days.

It was agreed that the steering committee would consider and recommend a program of future meetings.

The Committee adjourned at 5.30 o'clock p.m., to meet again at the call of the Chair.

J. G. DUBROY,
Clerk of the Committee.

ORDER OF REFERENCE

THURSDAY, 26th June, 1947

Ordered,—That the name of Mr. Timmins be substituted for that of Mr. Smith (*Calgary West*) on the said Committee.

Attest.

ARTHUR BEAUCHESNE
Clerk of the House

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
JUNE 30, 1947.

The Standing Committee on Industrial Relations met this day at 4.00 p.m. The Vice-Chairman, Mr. D. A. Croll, presided.

The VICE-CHAIRMAN: Gentlemen, will you come to order, please.

Following the resolution which was adopted at the last meeting the organizations suggested were invited to appear before the next meeting of the committee to be held. Replies were received from the organizations, most of whom have protested against the shortness of time. In addition to that, we have had a deluge of applications from people whom we did not invite. My thought in the matter was if it meets with the approval of the committee that these applications be turned over to the steering committee with a direction to consider them and report to the main committee.

In the meantime we have two groups here who are ready to go on, and my suggestion is that we hear them at the present time. The Canadian Bar Association is here and the Canadian Congress of Labour. The Canadian Bar Association will be very, very short; they promised to be no longer than five minutes, if you can believe that. I think we should hear them first.

Mr. JOHNSTON: Are they lawyers?

The VICE-CHAIRMAN: Yes.

Mr. HOMUTH: Are we going to have copies of these briefs?

The VICE-CHAIRMAN: Yes. May I say that the Canadian Bar Association have a letter addressed to Mr. Lalonde, it is only two pages; and Mr. Lee A. Kelley who is here will make a verbal presentation. I think it will be very brief. He has assured me that it will not take long. The Canadian Congress of Labour also have a brief.

I think we ought to lay down the method of procedure that we are to follow, and then stick to it.

Mr. JOHNSTON: Did you say, Mr. Chairman, that the Canadian Bar Association are going to make an oral presentation?

The VICE-CHAIRMAN: Yes.

Mr. JOHNSTON: That will finish their submissions before this committee.

The VICE-CHAIRMAN: Yes. Now, my suggestion is that we let whoever is selected to appear before the committee submit the brief with which he is charged without interruption and without questioning; then the person who presents the brief will be here to answer questions. Is that satisfactory to the committee?

Carried.

I will now call on Mr. Lee A. Kelley.

Mr. Lee A. Kelley, K.C., representing the Law Society of Upper Canada, called:

The WITNESS: Mr. Chairman, and honourable members of the committee, I wish to thank you first of all for the privilege of appearing before you.

Following the short introduction by your chairman, I can assure you, as your chairman said, that I will be very, very brief. I am here representing the Law Society of Upper Canada, which is really the bar association of Ontario, and I am associated with Mr. E. G. Gowling, representing the Canadian Bar Association. We were in conference for a few minutes before this committee met, and we found that any submissions we had were practically the same, and with a view to saving your time it was decided that I should submit them to you.

In the first place the associations are strongly opposed to any restriction of what we consider the traditional right of barristers to appear before any judicial or quasi-judicial body, a right which the bar has always claimed. Perhaps equally important to the public is the right related to that, which is also our claim, that the public should be entitled if they see fit to have representations made through counsel. It has always been the traditional right of the public to have representation by counsel on such occasions if they so desire, but by the provisions contained in section 32, subsection (8), of the draft bill, they are deprived of that right. You have taken away from them a right which has been recognized as a right of the public, one might almost say from time immemorial; a fundamental right, and by this clause it means they are barred from the benefit of counsel through the medium of legislation. Our submission is that this field attracts to it to-day specially trained men, men who are specialists in labour relations; and right to-day they get a higher fee than is paid to counsel in many cases, not only in the legal end of it but on the wage end of it as well. I would like to call your attention to the fact that since 1944 this right has been exercised, but as you will recall, P.C. 1003 was the important instrument by which the services of counsel were barred.

The VICE-CHAIRMAN: But that situation is changing and counsel do now appear before conciliation boards.

The WITNESS: But they are barred from acting in wage disputes and their services would be valuable on questions of various kinds. The developments of recent years, I submit, warrant use of the services of legal men with special trade training, and we have such men in the profession now, in preparing for presentation and in presenting cases, much more than was the case in the past.

My next point has to do with members of a smaller organization, particularly an employers' organization, or a small employees' organization—and right now I am representting one union here in Ottawa having trouble with its employers; to-morrow I may be working for an employer in another case. We all know how strong the unions are to-day and that they are in a position to retain the services of the best counsel. If you bar lawyers from employment by smaller organizations—whether employer or employee organizations—some of these organizations will not be able to prepare and put forward their case as it should be. In these wage disputes we had the larger organizations appearing with the assistance and advice of experts who are, to put it frankly, expensive, some of them are even more expensive than lawyers are to-day; so that by this action you are debarring the smaller organizations, the smaller men, from the opportunity of having the evidence which should be heard properly prepared and submitted before a conciliation board. Moreover, such individuals or groups or bodies are in the law according to our point of view entitled to such legal service. In that conection the Canadian Bar Association have put it in another way. They call attention to the professional abuse which would arise through the possibility of a disbarred lawyer who to-day could associate himself with either group before a conciliation board, he could appear and give his client the benefit of his legal training; and yet, a barrister who is in good standing would be disbarred from going before that very same conciliation board and representing his client. Not only could the disbarred lawyer act for a client, or as one of their group, but real estate experts can come in and give their opinions. As a matter of fact, it is only the lawyer in good standing who is barred by this section.

My next submission is this: I am rather bothered about the interpretation of one clause in particular, that is section 32, subsection (2). If you would just for a moment look at 32(2) you will notice:—

> Except as otherwise provided in this Act, a conciliation board may determine its own procedure, but shall give full opportunity to all parties to present evidence and make representations.

Now, the point there is that the word used is "may". That is permissive. The board may do this or that; but if it were made to read "shall", that is imperative. My submission is this, that in subsection (2) of section 32 you say that they must hear such representations and such evidence—"shall give full opportunity to all parties to present evidence and make representations", and in my submission that means, as they see fit; yet by subsection (8) of the same section you take away from the very parties who are interested in submitting that evidence and in making those representations the very best medium through which that evidence can be given and those representations made; that is through counsel. In other words, I say that you take away by subsection (8) what you make compulsory in subsection (2) of the same section. I submit by the wording of subsection (8), you take away to a great extent the capacity or ability of the individual or the parties to perform and do what is required of them. That, Mr. Chairman, is the only clause with which the bar association is concerned.

I do not think, gentlemen, that there is anything more that I need to say in elaboration of these various points which we submit for your consideration. I thank you very much for the privilege of appearing here.

The VICE-CHAIRMAN: Gentlemen, I understand that Mr. Kelley will not be back here again. He is now available for questioning if there are any questions which any of the members care to put to him.

By Hon. Mr. Mitchell:

Q. You are talking about parties not being able to be represented by counsel; don't you think the public are capable of talking, capable of speaking for themselves? Have you any evidence to show that the public are objecting to this provision?—A. No not the public, sir. I must say that having read it I do not quite get the import of this particular subsection (8) to section 32 which says:—

> In any proceedings before the conciliation board, no person except with the consent of the parties shall be entitled to be represented by a barrister, solicitor or advocate and, notwithstanding such consent, a conciliation board may refuse to allow a barrister, solicitor or advocate to represent a party in any such proceedings.

It is a well-recognized principle of law that any witness is entitled to the benefit of counsel. And I would submit this, sir: supposing some small organization was in dispute with a person maybe who was quite incapable of making his own presentation, is he not to have what he should have, the assistance, advice and good offices of a counsel to whom to tell his story and who could arrange the factual material in such a way that it could be properly submitted in support of his case?

Q. I think the thought in mind there is that trade unions were fearful that we might get into a condition in Canada similar to what they have in the United States where it is not so much a question of bargaining, it has reached the point where it has devolved into an open forum of legal argument between counsel. That is what the trade unions are fearful of in Canada. They think they can sit down, let us say in front of one of these conciliation boards, and make out a case for themselves; and I have never yet met an employer who was not able to do likewise. I think their idea is that they can make the best progress where they sit down around the table and talk over their problems together. I leave that thought with you. They have come a long way on the discussion end of it. You, of course, appreciate that under the workmen's compensation law in the various provinces counsel are not permitted to appear before the workmen's compensation boards. Then, of course, this section was in the Act of 1907.—A. Yes.

Q. Since 1907 that section has been in the Act. And the trade unions—I am voicing this as personal observation—are just fearful that these boards might develop into, shall I say, debating societies.—A. Might I point out one thing to you from my own experience in connection with the workmen's compensation board; up to a few years ago they would not even acknowledge a letter from a legal office. Today we are having considerable correspondence with them. I think they have found out that the lack of aid in operating without the co-operation of the legal branch has been rather disappointing to them. Now they are corresponding to some extent with us.

By Mr. Johnston:

Q. Can you tell me this, are the unions agreeable to having your point of view put in there; are they objecting to clause 32, subclause (8)?—A. I have not been in consultation with them. I haven't the slightest idea.

Q. I take it from what you have been saying that the unions themselves would not object to having legal counsel?—A. I think they might; but my point is that the legal profession should not be barred in this way.

Q. You are just assuming that; you are not sure?—A. No. The point I am making is this: I understand that years ago when the unions were not as influential and powerful as they are today, perhaps, and not so well supported financially it might have been difficult for them to get legal counsel, or the best legal counsel. I think today they are in a position to compete with any employer and perhaps overcome the employer in obtaining counsel. I have no idea what their view on that is today. They can think for themselves.

By Mr. Homuth:

Q. If this section has been in effect since the Act of 1907 came into force do you know whether or not the Department of Labour has tried to enforce it in any way?—A. I have never heard of any attempt at enforcement. Perhaps the minister could deal with that.

Hon. Mr. Mitchell: My hon. friend knows that the Department of Labour does not have to enforce a clause of that kind. It is a matter which rests solely with the members of a board and it is up to them to make a decision when the need arises.

The Vice-Chairman: Actually I think, for the information of the committee, since 1944 lawyers have appeared with the consent of the board. As a matter of fact, this clause was in the old Act, and I think we are just sort of reviving it for no good purpose.

Mr. Homuth: Was there not an appeal to the Privy Council on the matter?

The Vice-Chairman: There might have been. I could not say because I have not been following it.

Mr. MacInnis: Is it not a fact that organized labour objected to many of the provisions of P.C. 1003? I think they did. Whether they objected to this particular point or not, I do not know. But, as Mr. Homuth pointed out and as I think the minister admits, this has been in the Act since 1907. I have not looked up the debates of that time to find the arguments used; but I would assume that they were based on the fact that conciliation and arbitration proceedings between employers and employees are not legal matters; they are based on compromise and co-operation, and each one tries to get as much out of the other as he can. I notice Mr. Kelley said that while perhaps organized labour in the old days was not as strong as it is to-day, they are now able to pay for legal assistance; but having gotten along so far without help of legal counsel I think they have learned through experience that they can still get along. I feel that if you bring the legal fraternity into the work of conciliation boards you will be bedevilled with legal technicalities and quibbles much more than is the case now.

Hon. Mr. MITCHELL: I have read the debates, both what was said by the opposition and government members, and what it sets forth on the positions taken by them at the time the bill was before the House. Mr. Monk was in the opposition and Mr. Lemieux introduced the bill. I think it was Frank Smith who took an active part in that debate. But when you talk about lawyers being barred, lawyers represented companies as far back as 1919.

Mr. MACINNIS: They had counsel representing companies.

Hon. Mr. MITCHELL: And there was no objection.

Mr. MACINNIS: I do not think the labour unions would have any objection to that, it would be none of their business.

The VICE-CHAIRMAN: We have heard your representations, Mr. Kelley. Are there any further questions? Thank you, Mr. Kelley.

Gentlemen, you have a copy of the letter written by the Canadian Bar Association. May it be part of the record?

Carried.

OFFICE OF THE VICE-PRESIDENT FOR ONTARIO

56 Sparks Street,
Ottawa, Ontario,
June 27, 1947.

MAURICE LALONDE, Esq., M.P.,
Chairman of the Select Committee on Industrial Relations,
House of Commons, Ottawa.

DEAR MR. LALONDE,—

Re Bill 338

On behalf of The Canadian Bar Association representing as it does a very substantial number of the practising lawyers of Canada, I am instructed to advise you and the committee over which you preside, that in our view section 32(8) of the above bill, in so far as it restricts the right of the subject to the benefit of counsel in proceedings before the Conciliation Board, is not in the public interest.

One of the traditional rights of the subject is and has been the right to the benefit of counsel in advancing and safeguarding his rights before the courts. Generally speaking, this right to representation has historically been extended to bodies such as the conciliation board referred to in the above bill. It is felt by reason of training and experience there is no group of persons better qualified to deal with issues which inevitably will arise under legislation of this type, than members of the Bar. We consider, therefore, that this section in so far as it limits and frustrates this right, constitutes an unfair interference with the privilege of persons concerned with this legislation to be represented by counsel.

There is a second objection to the section and that is that it involves a direct and serious reflection on the legal profession in Canada. The section as presently drafted would appear to permit other agents with no training whatsoever in Canadian law, to represent persons before the board, at the same time excluding members of the Bar of Canada. Apart altogether from this reflection on the Canadian profession, this discriminates unjustly against Canadian lawyers.

The bill contains no explanatory note which would indicate the reason for the inclusion of the section. It is submitted that there should be an explanation and that those who support the principle expounded in the section should state clearly the objections to the extension of the right of counsel to those persons who will be engaged in proceedings before the conciliation board.

I have been authorized by the Canadian Bar Association to appear at the meetings of your committee on Monday and Tuesday, June 30 and July 1, and will welcome the opportunity to discuss this matter at that time.

Yours very truly,

E. G. GOWLING.

Mr. Pat Conroy, Chairman, Wage Co-ordinating Committee, Canadian Congress of Labour, Ottawa, Ontario, called:

The WITNESS: Mr. Chairman and members of the committee, I should like to take a minute and a half for an initial explanation of our brief. Our Congress shall present three briefs to your committee. One will be observations or criticisms of the proposed legislation; appendix A will be proposed amendments to it and appendix B, which has nothing to do with the bill at all, is an appendix to provide, we hope, a source of information to the committee as a whole. We hope it will demonstrate what is happening in the different provinces throughout the country in the matter of developing labour legislation. We believe it will be of some benefit to the committee because it will demonstrate what is happening in each particular phase of legislation in each province. It can be read quite easily. It will be submitted to you in printed form and we hope it will be of some help to the committee in coming to its conclusions.

Mr. LOCKHART: Could I ask where appendix B is?

The VICE-CHAIRMAN: It is not ready yet.

The WITNESS: It will be ready in a couple of days. It is a very extensive document.

The Canadian Congress of Labour welcomes this opportunity of appearing before the committee to give its views on the Industrial Relations and Disputes Investigation Bill. With your permission, the Congress will submit its comments on certain main features of the bill, and will attach to its submission two appendices. The first will set down detailed amendments which the Congress thinks should be made. The second will show, in parallel columns, the main sections of this bill and of the corresponding legislation in the provinces.

1. Certain features of this bill are a distinct advance over the provisions of P.C. 1003; for example, the statutory provision for equal representation of labour and employers on the Labour Relations Board; the certification of unions instead of individuals; the new definition of employee, which appears to settle the vexatious and contentious question of what constitutes a confidential employee for purposes of collective bargaining; the omission of the word "lawful" from section 3, which would otherwise be almost meaningless.

Unfortunately, however, there are a great many provisions which are open to serious objection.

2. The coverage of the bill is unnecessarily restricted, even by comparison with the old Industrial Disputes Investigation Act.

(*a*) The old Act, section 3 (*a*), began by conferring power to deal with disputes in "employment upon or in connection with any work, undertaking or business which is within the legislative authority of the Parliament of Canada, including, but not so as to restrict the generality of the foregoing", and then gave specific heads. This bill (Section 53), confines itself to specific heads, omitting altogether the general grant of jurisdiction. The Congress strongly urges that the general grant of jurisdiction be restored. There appears to be no good reason for its omission; its insertion cannot possibly do any harm, and may do much good. The minister, in his statement to the House on first reading, rightly emphasized the importance of securing as much uniformity as possible across the country in legislation of this kind. Clearly, one way of doing that is to make the coverage of the Dominion Act as wide as possible, and one way of doing that is to say explicitly that the Dominion Act shall apply to everything within the jurisdiction of the dominion parliament.

This point is of particular importance in view of the recent decision of the Judicial Committee of the Privy Council in the Canada Temperance Act case, that the power to make laws for the peace, order and good government of Canada is no longer restricted to cases of national emergency, and that if the real subject matter of legislation goes beyond local or provincial concern and must from its inherent nature be the concern of the dominion as a whole, then the legislation in within the competence of the dominion parliament, even though it may in another aspect touch upon matters especially reserved to the provinces. If that decision is followed by the courts, the power of the dominion is going to be much wider than it has been for a long time, and if this new bill includes the general grant of jurisdiction given under the old Act, then it will be in a position to benefit from any such judicial interpretation. Otherwise, it will not, and the new legislation may consequently apply only to some of the industries over which the dominion, for these purposes, has authority. This would be a ridiculous situation, and would frustrate the government's policy of securing the maximum degree of uniformity.

It may be contended that the general grant of jurisdiction is, in effect, made by paragraph (*h*) of section 53. But paragraph (*h*) simply repeats section 3 (*b*) of the old Act. The old Act has both the general grant and the equivalent of paragraph (*h*); the new bill should have the same.

(*b*) The bill also omits two of the specific heads of the old Act, paragraphs (v) and (vii) of section 3 (*a*): "works, undertakings or business belonging to, carried on or operated by aliens, including foreign corporations immigrating into Canada to carry on business;" and "works, undertakings or business of any company or corporation incorporated by or under the authority of the Parliament of Canada." The Congress can see no good reason for dropping these heads, and strongly urges that, to further the government's declared policy of securing the maximum degree of uniformity in industrial relations legislation, these specific heads be inserted in the bill.

(*c*) The bill also omits the old Act's section 3 (*c*), which covered "any dispute which the Governor in Council may by reason of any real or apprehended national emergency declare to be subject to the provisions of this Act." The Congress is unable to understand why this has been dropped. In view of the Canada Temperance Act decision, there can be no question that such a provision, or an even stronger one, would be within the power of the dominion parliament. The new Dominion Coal Board Bill, section 11, empowers the Governor in Council to assume control of the production, distribution and use of coal whenever "there is, or is likely to be a shortage of coal in Canada of such dimensions or nature, as to imperil the welfare or national life of Canada as a whole or as to concern Canada as a whole". Why is there no corresponding provision in this bill? A nation-wide industrial dispute in a basic industry is by no means impossible; several of them occurred last summer. Such disputes may certainly reach "such dimensions" or be "of such a nature" as to "concern Canada as a whole"; judging by Mr. Donald Gordon's evidence before this committee on July 26th, last year (pp. 301-5 of the evidence), they might even "imperil the welfare or national life of Canada as a whole". Mr. Gordon described the disputes then going on or likely to break out as having "a crippling effect on a major portion of our domestic economy". Other people used even stronger terms.

If the new legislation contains nothing corresponding to section 3 (*c*) of the old Act, or section 11 of the Dominion Coal Board Bill, nationwide industrial disputes in basic industries might paralyse the whole industrial life of the country, yet the nation's government would be powerless to intervene. A great national emergency would have to be dealt with by two, three, four, perhaps seven or eight provincial governments, under widely varying legislation (see Appendix 2), with the national government a helpless spectator.

True, this bill, by section 62, provides for co-operative arrangements with the provinces. But, though the text of this bill, or something very like it, must have been before all the provinces in the last month or so, only Nova Scotia has adopted anything like it (and even that with important differences), and only Nova Scotia has included in its Act provision for taking advantage of section 62 of this bill. British Columbia and Alberta have deliberately passed new Acts differing very widely from this bill, with no provision for making use of section 62. The other provinces have deliberately chosen to retain the pre-existing legislation, which also differs very widely from this bill, and also makes no provision for using section 62. The machinery of section 62, therefore, does not provide the means of dealing with nation-wide industrial disputes which concern Canada as a whole or imperil the life or welfare of Canada as a whole. The omission of anything like section 3 (*c*) of the old Act or section 11 of the Coal Board Bill is, the Congress submits, one of the most serious defects of this bill.

3.—Section 4, dealing with unfair labour practices, is inadequate. The Congress submits that subsection (3) should prohibit dismissal as well as threat of dismissal, and also attempt by threats, promises or inducements to induce employees to refrain from becoming or to cease to be a member or officer or representative of a trade union. The Congress also submits that subsections should be added prohibiting employers from maintaining a system of industrial espionage, or threatening to shut down or move a plant in the course of a labour dispute. Subsection (4) should be amended by adding, "subject to the provisions of any collective agreement". Above all, failure or refusal to bargain collectively as required by the Act, should be listed as an unfair labour practice.

4.—Section 8, dealing with certification of craft unions, is unsatisfactory.

(*a*) It should be qualified, as in P.C. 1003, by some such phrase as "in accordance with established trade union practice." The Act should not leave the door wide open for a craft union to appear where there never was one before and where an industrial union is already established and functioning.

(*b*) There should be provision, as in P.C. 1003, to exclude the members of a craft whose craft union has been certified under this section from voting in collective bargaining elections for the plant or industry as a whole.

The section might read like this:—

> If, in accordance with established trade union practice, the majority of a group of employees who belong to a craft by reason of which they are distinguishable from the employees as a whole are separately organized into a trade union pertaining to the craft, such trade union

> may apply to the board to certify it as the collective bargaining agency of such employees. If such group claims and is entitled to the rights conferred by this subsection the employees comprising the craft shall not be entitled to vote for any of the purposes of any application or collective bargaining with such employer except when the application or collective bargaining relates solely to such craft; nor shall such employees be taken into account in any manner in the computation of a majority in respect to any proceeding in which they are not entitled to vote.

5. Section 9 (2) is most unsatisfactory. If the board is satisfied that a union really does represent the majority of the employees, certification should be mandatory, not permissive. "May certify" should be "shall certify."

6. Section 9 (3) (*a*) is thoroughly objectionable. It gives a single employer an absolute veto on any collective bargaining extending beyond the limits of his own plant. The board is obliged to refuse certification unless every employer consents. The Congress submits that this paragraph should be struck out, leaving the board discretion to decide whether or not to certify in all the circumstances.

7. Section 9 (5), which purports to outlaw company unions, is inadequate. The Congress submits that it should at least be brought into line with the phrasing of section 4 (1). The subsection should read:—

> Notwithstanding, anything contained in this Act, no trade union, the formation, administration management or policy of which is or has been, in the opinion of the board, dominated, influenced, participated in or interfered with or financially assisted by an employer... contrary to the provisions of this Act, etc.

The board should also have the power to disestablish company unions.

8. Section 11, revocation of certification, is most objectionable. It will operate as an invitation to unscrupulous employers to meet a certified union's notice to negotiate with a claim that since the certification proceedings commenced the union has lost its majority; or else, to dilly-dally along with negotiations for some weeks or months and then claim that the union has lost its majority, and that therefore its certification should be revoked. This kind of game was tried, unsuccessfully, of course, even under P.C. 1003, which had no provision like section 11. The most notorious example was the Sitka Spruce case.

It may be contended that, if the union really has a majority, it has nothing to fear, and that if it has lost its majority it has no moral right to bargain. This misses the point. Even if the employer fails to prove that the union has lost its majority, the investigation of the case will take some time. Presumably, the board will insist on a plausible prima facie case before it will look into the matter at all; then it will ask the union for its reply to the employer's case, and the employer for his rebuttal; then it may hold a hearing. It may also send in its own investigators. It would be very surprising if all this did not take several weeks.

Meanwhile, negotiations are at a standstill; union members are being called on to pay their dues with nothing to show for it but weariness of the flesh. By the time the board hands down its decision, a good many members may well have lost patience, got discouraged, and dropped their membership. Even if the board decides that the union still had a majority at the date of the employer's application for revocation, by the time the decision is made, the majority may be gone, and the union, for all practical purposes, dead. Even if it is not, there is nothing to prevent the employer from filing a new application for revocation, either at once or after going through the motions of negotiating until he thinks the moment is propitious.

Then the whole merry-go-round starts all over again. A strong well established union could no doubt stand this sort of thing, if any employer so far took leave of his senses as to try it. But a new union, in a previously unorganized plant or industry, would almost certainly succumb. It is the newly organized, who most need protection, who would be the victims. In short, this section is about as solid a barrier against organizing the unorganized as could well be imagined, short of a direct prohibition.

9. The length of time involved in the conciliation procedures which must precede even the taking of a strike vote is too long.

(*a*) After a union has served notice to negotiate, there may be twenty days' delay before bargaining even begins. Then, presumably, bargaining would have to go on for at least a week or two before the union could request intervention with any hope of getting it. Then the minister might decide to instruct a conciliation officer, who has at least fourteen days to report. Then the minister has fifteen days to decide whether or not to appoint a conciliation board. If he decides not to, then, after a delay of about seven or eight weeks, the union may take a strike vote. By that time, of course, the chance of a successful strike may have been lost. If, on the other hand, the minister decides to appoint a board of conciliation, that process may take another twelve days. The board will have at least fourteen days to make its report. Then the union must wait another fourteen days before it can even take a strike vote. In this case, the total delay might easily be three months, and the chance of a successful strike will in most cases be microscopic. Moreover, the minister may "from time to time allow" an extension of the time within which a conciliation officer or a conciliation board must report, so that the delays might be even longer than the seven or eight weeks or three months. This is "cooling off" with a vengeance; it might perhaps more appropriately be called "choking off."

(*b*) If the employer refuses to bargain at all, under section 16 (*a*), the minister may instruct a conciliation officer. If he does, and the conciliation officer fails, or even without a conciliation officer, the minister may appoint a conciliation board. Under section 23, it is only when fourteen days have elapsed after the minister's receipt of the board's report that the employees may strike. Under section 21 (*a*) the union may not even take a strike vote until the employer has bargained, and either a conciliation board has been appointed and fourteen days have elapsed after receipt of its report, or fifteen days have elapsed without the appointment of a board. So if the employer refuses to bargain, the union cannot legally even take a strike vote, much less declare or authorize a strike, no matter how long it waits; and the employees can engage only in an undeclared and unauthorized strike, without any union strike vote, and only if the minister chooses to appoint a conciliation board, and even then only after a delay of two or three months. The minister, by refusing to appoint a board, can prevent them from striking, legally, at all, no matter how long they wait.

If the union takes a strike vote, it renders itself liable, under section 42, to a fine of not more than $500; if it declares or authorizes a strike, it renders itself liable, under section 41 (3), to a fine of not more than $150 a day for each day that the strike lasts, and every officer or representative renders himself liable, under section 41 (4) to a fine of not more than $300. If the employees strike, then they render themselves liable, under section 42 (*a*), to fines of not more than $100 each. And all this because the employer has flagrantly disobeyed the act!

This would be bad enought if the employer's refusal or failure to bargain were subjected to a heavy penalty; but, as will appear in a moment or two, the provisions for punishing refusal or failure to bargain are so inadequate as to be farcical.

A reasonable period of conciliation preceding the declaration or authorization of a strike may be admissible; but the period contemplated in this bill is much too long, so long as to be probably unenforceable.

The Congress submits also that there should be no prohibition of a strike vote during the period of conciliation. The employer does not have to take a vote of his shareholders before declaring a lockout; he can therefore make all the necessary preparations for a lockout while conciliation is going on. A well-conducted democratic union, such as most Canadian unions are, cannot undertake a strike at all without a vote of its members; under this bill, it would be prohibited from making any preparations for a strike while conciliation was going on, though the employer could go merrily ahead making all the preparations he liked. The union would be penalized for adhering to democracy, and the inevitable effect would be to encourage unions to declare or authorize strikes without strike votes. This, surely, can hardly be considered sound public policy.

The Congress further submits that proper provision should be made to allow strike votes and strikes where the employer refuses or fails to bargain at all. Such strikes would be really a method of enforcing the Act; and if the provisions of section 43, dealing with refusal or failure to bargain, remain as they are, strikes will be practically the only effective method of enforcement.

10.—Section 43, which purports to provide the method of enforcing the obligation to bargain collectively, and section 40 (3), which provides the penalties for breach of this obligation, are crucial. They are the very heart of the bill. The kindest thing that can be said of them is that they are very weak. When the employer refuses or fails to bargain, the union's first recourse is to complain in writing to the minister (not the board). The minister may, within any period of time which seems good to him, refer the matter to the Board. If the minister does refer the matter to the board, the board must inquire into the complaint, and may then order the offending employer to obey the Act. If the board issues the order, and the employer persists in his refusal or failure to bargain, then the union must apply to the minister (not the board) for consent to prosecute. If the minister gives his consent, the union must then prove, according to the strict rules of evidence, to a judge or magistrate who probably has had little or no experience in labour matters, what it has already proved to the minister and the board. Then, if the judge or magistrate finds the employer guilty, the heavy hand of the law descends, and the culprit may have to pay as much as $50 for every day the refusal or failure to bargain continues. This penalty is not adequate.

The Congress submits that, if the present police court method of enforcement is to remain, the union should be able to proceed, or have the Crown proceed, against the offender, without having to go through a long preliminary process of complaining to the minister, having an investigation by the board, and then getting the minister's consent to prosecute. The proposed method of enforcement is cumbrous, repetitive, slow and ineffective, and allows a double discretion to the minister, who should not come into the process at all. Either the case should go straight to the courts, or, better, the board should deal with the whole matter and punishment should be swift and as nearly automatic as possible. Just how this can be done the Congress will suggest below.

11. The bill goes a long way towards making unions legal entities. The Congress submits that this is a matter where it is advisable to make haste slowly, a subject that should be dealt with only by substantive legislation and after careful investigation. Anyone who is enamoured of the idea that unions should be forced to incorporate would do well to read the careful discussion in Joel Seidman's "Union Rights and Union Duties" (Harcourt, Brace and

Company, 1943). He will find that this, and other methods of regulation, are full of unsuspected pitfalls. Unions might, for example, make use of the holding company technique to escape from the consequences of incorporation.

The relevant sections of this bill are sections 18 and 45.

Section 18 makes collective bargaining agreements binding on unions "subject to and for the purposes of this Act." This last phrase may be intended to cover the same ground as the sections in the British Columbia Industrial Conciliation and Arbitration Act (section 47), the Saskatchewan Trade Union Act (section 22), and the Ontario Rights of Labour Act (section 3). The Congress submits, however, that it would have been better to make assurance doubly sure by adding some such sections as those of the provincial acts just noted, preferably the Saskatchewan section 22 and the Ontario section 3, which are practically identical: "A collective bargaining agreement shall not be the subject of any action in any court unless such collective bargaining agreement may be the subject of such action irrespective of the provisions of this act."

11. Section 45 provides that, for purposes of a prosecution under this act, a union shall be deemed a person, and any act or thing done or omitted by an officer or agent of a union within the scope of his authority to act on behalf of the union shall be deemed to be an act or thing done or omitted by the union. One serious objection to this is that many unions engage in many activities besides collective bargaining, and accumulate funds earmarked for these various activities; and that under this section all these funds could be levied upon to pay finies for breaches of the Act, including such breaches as those noted under point 9 (*b*), above.

Another objection is that the term "agent of a trade union" is not defined, and would presumably be subject to judicial interpretation; and the union might find itself called on to pay fines for acts of someone whose actions it had not authorized or even approved, actions of which it might entirely disapprove, actions of someone who, in the union's own opinion, was acting altogether beyond the scope of his authority. The law of agency was not developed for dealing with trade unions; its application to unions, the Congress understands, is by no means simple. It is possible that this section should be qualified by some such words as those of section 1 of the British Columbia Trade-Unions Act, which provides that no union shall be liable in damages for any wrongful act in connection with a trade dispute unless the members or the council, committee or other governing body, acting within the authority given it by the union constitution and by-laws, or in accordance with resolutions or directions of the members resident in the locality, have authorized or been a concurring party in such wrongful act.

The Congress is advised that the indirect effect of this section and section 41 (3) and (4) may be to make unions suable in damages in a civil court, as in the famous Taff Vale case in England.

A further question which arises is what does "union" mean in this section? Will it be the local union, the national or international union, or, in the case of federal locals of the Trades and Labour Congress or chartered locals of the Canadian Congress of Labour, the central labour organization, which will be prosecuted and whose funds will be taken to pay the fines? Is a national or international union or a central labour body to be held responsible for every act of any local "agent" which a judge or magistrate considers to have been done within the scope of his authority? If so, we may get some very queer and unexpected results; and great national and international organizations of the most unimpeachable respectability may find themselves crippled.

The Congress notes that employers' organizations also are created persons for the purposes of prosecution under this legislation. But if an employers' organization is fined, and proves to have no money or almost none, who pays? Are the individual employer members of the organization liable?

In view of these difficulties and obscurities (and many more could doubtless be suggested) the Congress submits that section 45 should be very carefully reconsidered.

12. The Congress also submits that Parliament should take this opportunity to write into the law of Canada certain safeguards of trade unionism which have long existed in England and are now part of the law of Saskatchewan and Ontario. Briefly these are: (*a*) A union and its acts shall not be deemed to be unlawful simply because one or more of its objects is in restraint of trade. (*b*) Any act done by two or more members of a trade union, if done in contemplation or furtherance of a trade dispute, shall not be actionable unless it would have been actionable if done without any agreement or combination. (*c*) A union shall not be made a party to any action in any court unless it could have been so made a party irrespective of the provisions of this Act.

13. Section 24 appears to prohibit strikes by uncertified unions. The Congress submits that this undesirable. Certain large, well-established responsible unions have not hitherto considered it necessary to get certified. Under this legislation, they will rush to do so, and the board's docket will be cluttered up with cases which need never have come there at all. So far as the Congress is aware, no such provision ever appeared in any Canadian Act, until it was adopted in the new Nova Scotia Act a month or so ago, and Nova Scotia clearly copied its section from the bill now before this committee.

The intention of the section is probably to prohibit strikes by minority unions. But the Congress submits that such strikes are, in the nature of things, bound to be few and limited in scope. The section is therefore not necessary, and will just be vexatious to unions and a nuisance to the board.

14. P.C. 1003, section 21 (4), and the present Manitoba, Ontario and New Brunswick legislation, all protect unorganized workers from changes in terms of employment, except with the consent of the employees, until two months after the employer had given notice of such changes. This bill protects organized workers, by sections 14 (*b*) and 15 (*b*); but it does not protect unorganized workers. The Congress submits that it should.

15. Under the old Industrial Disputes Investigation Act, under P.C. 1003, and under the Manitoba, Ontario and New Brunswick Acts, no person who has a pecuniary interest in the matter referred to a conciliation board, is eligible as a member of a conciliation board. This bill makes no such provision. The Congress submits that the usefulness of conciliation boards will be very seriously impaired, if not altogether destroyed, if the parties can appoint, for example, officers of the corporation and union concerned. Such persons would be in an impossible position. Either they would have to stick to every jot and tittle of company and union policy respectively, in which case only a miracle could save them from violation of their oath under section 30; or they would have to perform their duties under the oaths, in which case they would probably be called on the carpet for having sold out, betrayed the interests of their shareholders or members, and generally having failed to perform the duties of their respective offices. The Congress submits that some such provision as existed in the old Act should be inserted here.

16. The sole method of enforcement under this Bill is by summary conviction. This means that offences will be dealt with in police courts by magistrates and justices of the peace. Magistrates and justices of the peace and judges generally are, as a rule, unfamiliar with industrial relations. This method of enforcement also involves considerable delay and infinite possibilities of raising technical points. The Department of Labour is familiar with the case of Ben's Limited, Halifax, in which there was no question of the facts. The offences were flagrant, and not denied, but it proved impossible to secure a conviction, and the case was dismissed on purely technical grounds.

The Congress feels that enforcement of the Act should be the responsibility of the Labour Relations Board. The method should be the filing of a mandatory order of the board with the appropriate court, and violations should be punishable as contempt of court. The enforcement should be swift and as nearly automatic as possible, and the penalties should be severe.

17. If, however, the police court method is to be retained, the penalties should be revised. The penalties in sections 39, 40 (1), 40 (3), 41 (1) and (2), would not be effective as against the average employer and would be trifling as against large corporations. Section 40 (1) and (3), and section 42 place unions and corporations on the same footing as to fines, which is an absurdity. A fine of $150 per day might mean a great deal to many unions in Canada, but there are many companies for which this would be a trifling penalty.

18. Under section 46, the minister's consent is necessary to any prosecution. Under P.C. 1003, it was the board's consent. The Congress submits that at least the provisions of P.C. 1003 on this point should be retained, though it also submits that prosecution should be undertaken by the board itself, or the Crown, and that unions should not be obliged to shoulder the financial burden of enforcing the law. Certainly, however, the granting or refusal of consent to prosecute is an administrative function, and as such should be in the hands of the board. It ought not to be in the hands of the minister, who might be subjected to political pressure. The Congress ventures to predict that if this power is left with the minister, he will find it troublesome and embarrassing.

19. Section 40 provides for back pay for employees suspended, transferred, laid off or discharged contrary to section 4, but does not provide for reinstatement. The Congress submits that this is a serious omission which should be repaired.

20. Section 54 applies the Act to Crown companies, but gives the Governor in Council the power to exclude any Crown company and its employees from the operation of the Act. This power is altogether indefensible, and the words, "except any such corporation and the employees thereof," down to the end of the section, should be struck out.

21. Section 55 exempts from operation of the Act His Majesty in right of Canada and employees of His Majesty in right of Canada, except as provided by section 54. This means that employees of the National Harbours Board, who were included under P.C. 1003, are excluded from this legislation. The Congress submits that they ought not to be excluded. It also submits that employees of naval dockyards, and any other industrial operations directly conducted under a government department ought to be covered by this legislation.

22. Section 67 (1) (*b*) gives the Governor in Council power to exclude an employer or employee or any class of employer or employees from the provisions of Part I. This also appears to the Congress to be utterly indefensible. It really confers on the Governor in Council the power to nullify the whole Act. It should be struck out.

23. Section 61 confers on the Canada Labour Relations Board much the same powers as those now enjoyed by the Wartime Labour Relations Board (National). But there is one significant exception. Section 25 (2) of P.C. 1003 provided that if any of the points in subsection (1) arose in any legal proceedings, "the justice or justices of peace, magistrate, judge or court before whom it arises shall, if the question has not been decided by the board, refer the question to the board and defer further proceedings until the board's decision is received;" and subsection (1) provided, like subsection (1) of section 61 of this bill, that the decision of the board on the questions therein

set out should be "final and conclusive for all the purposes of these regulations. Taken together, these two subsections might have been held to mean that if, for example, the board found that an employer had not been bargaining in good faith, and the board then prosecuted, or granted leave to prosecute, the board's decision on the point was final, and not subject to review by the magistrate or court, whose sole function was to assess the penalty on the basis of the board's finding as to the facts. The drafting was not perhaps as clear as it might have been, and the courts might have held that only express words in the legislation could deprive them of their power to hear the whole case over again and decide the guilt or innocence of the accused according to their own procedure and rules of evidence.

Under this bill, the obscurity is even greater. The courts might conceivably hold that the last words of subsection (1) meant that the board's decision as to the facts is final and conclusive and not subject to review by any magistrate, judge or court, and that the sole function of the magistrate, judge or court is to assess the penalty. But the courts might equally well hold the opposite; indeed, it is more probable that they would hold the opposite. If the intention of the bill is to confine the magistrate, judge or court to assessing the penalty, then that should, the Congress submits, be clearly stated. On so important a point, it is in the highest degree desirable that there should be no obscurity or doubt, and that litigation and varying judicial interpretation should be reduced to a minimum.

24. The report of the Industrial Relations Committee of the House of Commons last year recommended that "a measure of union security should follow certification." This bill does not provide for anything of the kind. The Congress submits that two new subsections should be added to section 6, as follows:—

(3) Upon application by a trade union, the board may order or establish that a collective agreement made or being negotiated or proposed to be entered into, renewed or amended, shall include or be deemed to include such provisions of union security, whether for a closed shop or for a union shop or for maintenance of membership, or any of them, as the board shall decide to be appropriate; provided that no provision shall be ordered or established by the board which, in the opinion of the applicant, is less satisfactory than any provision on the same or related subject contained in any collective agreement relating to any of the employees in the bargaining unit, or purported collective agreement, in force or which expired within six months prior to such collective bargaining.

(4) Upon the request of a trade union which represents a majority of the employees who constitute a bargaining unit of his employees, and upon receiving from any employee in such unit a request in writing to do so, an employer shall deduct and pay in regular periodic payments out of the wages due each such employee, to the person designated by the trade union to receive the same, the union dues of each such employee until any collective agreement then in force is terminated, or the employee has withdrawn such request in writing, whichever shall last occur, and the employer shall furnish to such trade union before the 10th day of each month the names of any employees who have furnished or withdrawn such authority.

25. The bill does not provide that collective bargaining shall include negotiations from time to time for the settlement of disputes and grievances during the term of the agreement. On the contrary, section 26 expressly permits, and therefore in effect encourages individual presentation of grievances. This

is a device by which the authority of the certified union to represent all employees can be undermined. A hostile employer can make it clear that individually presented grievances will receive greater consideration and more favourable treatment than grievances presented through the certified union. This section should be struck out.

26. The Congress' final comment has to do with the desirability, rightly emphasized by the Minister of Labour in his statement to the House of Commons on the first reading of this bill, of attaining the greatest possible measure of uniformity in legislation of this kind. The Congress does not think it necessary to set out here in detail the arguments on this point. They are very clearly summarized in one of the appendices to the Report of the Sirois Commission, "Labour Legislation", by Dr. A. E. Grauer, now president of the British Columbia Power Corporation, at pages 180-1:—

> The lack of uniformity of labour legislation as between provinces has serious implications for internal policy. In the first place, it has to some extent encouraged competitive bidding between provinces for industries at the expense of labour standards. Where industries with poor standards have been encouraged, sore spots in labour relations and social conditions have been created. Once established, these sore spots are very difficult to get rid of. In addition, as long as competitive bidding for industry is allowed by labour legislation, there will be bad feeling among workers and bad feeling between provinces. In the second place, lack of uniformity in labour legislation is in itself a condition that prevents adequate and more uniform standards being set. Among the industrially important provinces, the tempo of labour legislation is conditioned by the most backward province because of the fear of others that their industry will be penalized in interprovincial competition if they get much ahead of that province. Again, lack of uniformity enables businesses to threaten removal to another province to prevent the enactment of new legislation or the raising or the enforcement of existing standards.
>
> Present conditions in labour legislation thefore, including difficulties of enforcement, leave the way open for undesirable economic and financial results because they encourage or allow industries with poor standards. The hidden costs of such industries expressed in terms of bad health, relief costs, early unemployability, etc., must be borne by the taxpayer.

Assuming that the highest possible measure of uniformity is desirable, how can it be achieved?

One method is for the dominion to pass a model act, covering everything within its jurisdiction and providing for co-operative arrangements with provinces which adopt substantially the same legislation. This is substantially the method embodied in this bill, though, as already noted, this bill does not appear to cover everything within the dominion's jurisdiction. If it worked, it would be the easiest and most effective method because it would raise no questions about provincial rights, the British North America Act and its amendment, and related matters. But unfortunately, it seems now quite plain that it will not work.

The Congress has already pointed out that, though all the provinces must have had the text of this bill before them, only one has chosen to adopt anything like it. If this bill is adopted substantially as it stands, we shall have seven different systems of labour relations legislation, even without allowing for the important differences between this bill and the Nova Scotia Act; the British Columbia Act; the Alberta Act; the Saskatchewan Act; the Manitoba, Ontario and New Brunswick Acts (embodying or applying P.C. 1003 almost verbatim); the Quebec Act, the Dominion and Nova Scotia Acts; the Prince Edward Island

Act. A glance at appendix 2 to this submission is enough to show that the variations are enormous. The method of securing uniformity embodied in this bill would not, therefore, appear to offer much hope; indeed, it would hardly be putting it too strongly to say that it has already broken down. A new approach is needed. Since the government is impressed with the importance of uniformity, as the Minister has said, then it should seriously consider five alternative methods.

The first is to pass an act applying to all industry in the country, relying on the Canada Temperance Act decision. The real subject matter of such legislation, it might be contended, goes beyond local or provincial concern, and must from its inherent nature concern the dominion as a whole. There can be no question that the Fathers of Confederation intended that legislation dealing with labour relations and labour standards should belong to the dominion parliament. Sir John A. Macdonald himself, in 1872, passed through parliament two acts dealing with trade unions, both of which, in one form or another, are still on the statute books; and in 1882, 1883, and 1884, his government, which included five Fathers of Confederation, introduced three successive factory bills into the dominion parliament.

A single dominion labour relations Act covering the whole of industry from coast to coast would therefore be fully in accord with the intentions of the Fathers, and the constitution they meant to give us and thought they had given us. It would be the simplest and most direct method of securing uniformity. Unfortunately, it is impossible, as yet, to be certain that the courts would uphold such legislation. We do not yet know how far the courts will follow the Canada Temperance Act decision, or how far they will apply it. Sir John Macdonald himself said that elections were like horse races; you know more about them after they are run; and to the layman, judicial decisions fall in the same category. None the less, the attempt to solve the problem by this means is worth making. If it succeeded, it would dispose of the matter once and for all; if it failed, we should be no worse off, for the alternative methods would still be open to us.

A second method is to get an amendment to the British North America Act, adding "labour relations" to the enumerated heads of section 91. This was the method followed in dealing with unemployment insurance. The chief objection to it is that it would place the whole subject under the exclusive jurisdiction of the dominion, and thus prevent the provinces from legislating at all. The Congress thinks there are advantages in allowing individual provinces to experiment with more advanced legislation than the nation as a whole is ready to embody in nation-wide legislation *providing a dominion Act sets minimum standards* below which no province will be allowed to fall.

A third method of proceeding would allow for this. It would consist in getting an amendment to the British North America Act bringing "labour relations" under section 95, along with agriculture and immigration. The amending act might read:—

> Whereas the Senate and Commons of Canada in Parliament assembled have submitted an address to His Majesty praying that His Majesty may graciously be pleased to cause a bill to be laid before the Parliament of the United Kingdom for the enactment of the provisions hereinafter set forth.
>
> Be it enacted by, etc.
>
> 1. Section 95 of the British North America Act is amended by inserting after the word "agriculture" in the second line thereof, the words "labour relations" and by inserting after the word "agriculture" in the fifth line thereof, the words "labour relations" and by inserting after the word "agriculture" in the seventh line thereof, the words "labour relations", so that it shall now read: "In each province the

legislature may make laws in relation to agriculture, labour relations in the province, and to immigration into the province; and it is hereby declared that the parliament of Canada may from time to time make laws in relation to agriculture, labour relations in all or any of the provinces, and to immigration into all or any of the provinces; and any law of the legislature of a province relative to agriculture, labour relations or to immigration shall have effect in and for the province as long and as far only as it is not repugnant to any act of the Parliament of Canada.

2. This Act shall be entitled British North America Act 194....

This would allow both a nation-wide minimum and provincial experimentation above that minimum.

A fourth method is that suggested by the late law clerk of the Senate, Mr. W. F. O'Connor, K.C., in his masterly report to the Senate in 1939 on the British North America Act, and any lack of consonance between its terms and judicial construction thereof. This method of securing uniformity, it may be added, was supported by Mr. Meighen, in a very powerful speech in the Senate in 1940, on the unemployment insurance amendment. Mr. O'Connor, who found that the scheme of jurisdiction embodied in the British North America Act had been "repealed by judicial legislation" in 1896 by the decision of the Judicial Committee of the Privy Council in the prohibition case (see his report, p. 13), recommended that parliament should ask the British parliament to pass a British North America Act Interpretation Act, "which should declare, saving the effect of all things already decided and done, that the true intent of the British North America Act, 1867, is and always has been, etc., etc. (as per a formula to be stated in the words of one or more of the decisions of the Judicial Committee rendered before the decision, in 1896, of the prohibition case) and that thenceforth the act should be interpreted and construed accordingly." (P. 13.) In other words, what we need in an interpretation act saying that the British North America Act means what it says; or, as Mr. O'Connor put it, "not amendment of the act, but enforced observance of its terms is the proper remedy." (P. 13.) The dominion parliament could then unquestionably go ahead and pass an act covering all the industry in the country.

A fifth method of securing a substantial degree of uniformity is to make use of section 94 of the British North America Act. This section, in effect, provides that the dominion parliament may make provision for the uniformity of all or any of the laws relative to property and civil rights in the provinces other than Quebec (the original text says "Ontario, Nova Scotia and New Brunswick," but the provisions of the various enactments admitting or creating the other common law provinces make the section apply to them also), and that from and after the passing of any dominion act for this purpose, the power of the dominion to legislate on the matter "shall be unrestricted;" but that no such dominion act shall come into operation until the provincial legislature concerned has adopted it. In other words, this section provides a means by which the provinces other than Quebec can, if they choose, and without any amendment to the British North America Act, finally and irrevocably surrender to the dominion jurisdiction over any or all property and civil rights, including their jurisdiction over labour relations.

This section was intended and expected to be very important. Sir John Macdonald laid great emphasis on it, and said that the task of putting it into effect would be one of the first which the dominion would undertake. Actually, shortly after confederation, the dominion did appoint Col. Gray a commissioner to go into the matter, but his efforts came to very little and the whole thing faded out of practical politics. In fact this section has become the Cheshire cat of the Canadian constitution: nothing remains but the smile. It will be recalled, however, that the Cheshire cat had the capacity of reappearing as a complete cat when it chose. There is nothing to prevent its constitutional counterpart from doing the same. In other words, the dominion can, if it wants to, pass a labour relations act covering industries unquestionably within its jurisdiction and applicable to all industries in the common law provinces when the legislatures of those provinces so decide; and containing a provision for co-operative arrangements with Quebec, along the lines of the present section 62, if and when that province so desires.

This course was suggested by Mr. Meighen for unemployment insurance in the same speech in the Senate in 1940 referred to a moment ago. It has the disadvantage that it will not establish uniformity at one stroke, and that it would not apply to Quebec unless that province chose to pass concurrent legislation which it could repeal any time it liked. But it has the advantage that it would not require an amendment to the British North America Act; that it could not come into operation in any province without that province's consent; and that it would leave Quebec absolutely free to do exactly as it chose. It would also have the advantage of allowing the common law provinces to establish uniformity for themselves without waiting for Quebec to agree. Constitutionally, unanimous consent of the provinces is not in the least necessary to secure an amendment to the British North America Act. That has been irrefutably demonstrated by the late Hon. Norman Rogers in 1931, and it is clear also from Mr. O'Connor's report. But politically, it might be difficult for the government to seek an amendment of this importance if Quebec objected. There is much to be said for leaving Quebec to do as it pleases; there is not much, if anything, to be said for giving it power to prevent the other provinces from establishing uniformity under the existing provisions of the constitution if they desire it.

On the whole, the Congress thinks that the best, quickest and easiest method of securing uniformity is by an amendment to section 95 of the British North America Act. But if the government and parliament do not see fit to adopt that method, they should at least give serious thought to the other possible methods. The largest possible measure of uniformity is essential; the method of getting it embodied in this bill is a failure. Some other method has got to be found. The Congress has suggested several. But one way or another, the time has come when, in this matter of labour relations, we must realize Sir John Macdonald's vision of confederation: one people, one government, instead of nine peoples and nine governments. Canada must cease to be a loose league of states and become a nation.

Respectfully sumbitted,

A. R. MOSHER,
President.

PAT CONROY,
Secretary-Treasurer.

The VICE-CHAIRMAN: Gentlemen, I think you have had enough for the moment. With your consent, I will have appendix A put in the record. We will forgo reading it at the present time. When appendix B arrives we will then have it put in the record. Is that satisfactory to the committee?

Carried.

The VICE-CHAIRMAN: Is it the desire of the committee to proceed with the questioning of Mr. Conroy or do you wish time to digest what he has said? My suggestion is that we should proceed as quickly as we can and if we are ready we will throw the meeting open for the members of the committee to question Mr. Conroy.

Mr. ARCHIBALD: I should like to ask one question. As this Act stands, does it cover such places as the Yukon and Northwest Territories? Has it any application there.

The VICE-CHAIRMAN: Every place in Canada.

Mr. ARCHIBALD: It does specify certain industries, but it does not cover mining, for instance.

The VICE-CHAIRMAN: The section is there.

The WITNESS: I would not think it covered all industries in all provinces.

Hon. Mr. MITCHELL: It covers everything in the unorganized territories where there are no provincial governments.

The VICE-CHAIRMAN: I think it is a little unfair to ask you to digest this material immediately and ask questions about it. I realize it has been a long brief. We have not any other people to hear to-day.

There is just a bit more business. In order to hear the nine or ten organizations which we agreed to hear, it would be necessary for us to sit as long as possible. Is it the desire of the committee to sit in the afternoon and evening or in the morning and afternoon? Which do you prefer.

Mr. MAYBANK: It may be necessary to sit three times a day, Mr. Chairman, unless there is a clash of interests which prevents it.

The VICE-CHAIRMAN: I did not hear that, Mr. Maybank.

Mr. MAYBANK: I said I thought it may be desirable to have an understanding that the committee sit three times a day, except where there are clashes of interest which prevent it.

By Mr. Johnston:

With reference to your remarks concerning the amendment to the B.N.A. Act, why did you exclude Quebec in all cases?—A. We did not exclude it in all cases.

Q. On page 21 of the brief you say that it would not apply to Quebec?—A. We just set it up as an alternative matter.

Q. Why would you do that?—A. Quebec takes the position that, regardless of what the other provinces say Quebec is not going to agree to it.

Q. If you were making an amendment to the B.N.A. Act in the other eight provinces whether they agreed to it or not, wouldn't it be better to have the nine provinces in it?—A. If Quebec agrees to it. I am only quoting the traditional stand of that province.

Q. If we are going to amend the B.N.A. Act, isn't that something that would be compulsory on all nine provinces? I am not an expert on it, but I do not see how a change in the B.N.A. Act could be made applicable to eight provinces and leave one out?

Mr. MACINNIS: The British North America Ast makes provision, in one or two cases, that it shall not apply to the province of Quebec.

Mr. JOHNSTON: But you are going to amend the B.N.A. Act now.

Mr. MACINNIS: I think we are getting away from the point we were to decide upon as to when we should sit and how often. Rushing this matter at this time is creating a bit of difficulty. We agreed to sit sometimes when the House was in session, but the members of this committee have obligations in the House which they cannot forego. We hope to be able to work in the sittings of this committee so we can, at least in some satisfactory way, fulfill our obligations in connection with matters which are coming up in the House. There is very important legislation in the House now in which some of us are interested. I think it would be better for the committee to sit in the morning and in the afternoon so we would be free to be in the House at some time to look after the legislation which is before the House.

Mr. JOHNSTON: I would agree with that.

The VICE-CHAIRMAN: There are two matters before us then. There is the matter of when we sit and the matter of further organizations to be heard. I will ask for no opinion on those matters at the moment. I am going to have the steering committee meet immediately after we adjourn to make a decision on these matters. Then, we will bring that decision back to this committee.

Mr. HOMUTH: I think this bill is such an important bill that, personally, I want to see it passed and become legislation. There certainly are enough members of all groups in the House to look after whatever legislation there is there, so this committee should sit every hour it possibly can in order to deal with this bill. I would suggest we sit at night. We could reconvene at eight o'clock or eight fifteen at night and sit through until the House closes. I would suggest we do that.

The VICE-CHAIRMAN: If there is nothing further, I thought of adjourning and having the steering committee consider these matters.

Mr. HOMUTH: Might we sit to-night?

The VICE-CHAIRMAN: We have not any business which we can consider to-night. I think the Pension Bill is up in the House to-night so we could very well sit to-night, unless there are any members of the committee who have not expressed an opinion on that bill.

Mr. MACINNIS: It is not merely a question of expressing an opinion and, perhaps, leaving it there. The Pension Bill is like this bill, there are a lot of amendments we must try to make in it. I cannot help make any amendments in the Pension Bill by being here.

Mr. HOMUTH: There is about as much chance of amending that Pension Bill in the House as the proverbial snowball. I think any chance of amending that bill is out and we might just as well make up our minds on that and concentrate on this bill.

Mr. MACINNIS: There is another point in regard to this legislation. If it is as important as Mr. Homuth says, it should not be put through in a series of forced marches such as he suggests. While I would be the last one to say I have not a fairly good mind to consider these things, there is a limit to what any man can do.

The VICE-CHAIRMAN: I would ask the steering committee to remain after this meeting is closed. Is there a motion that we adjourn?

Mr. LOCKHART: Before we adjourn, there are other representations coming in with regard to being heard?

The VICE-CHAIRMAN: Yes, we are going to deal with them.

Mr. LOCKHART: Are they going to be considered?

The VICE-CHAIRMAN: Yes, by the steering committee.

Mr. LOCKHART: There have been some very strong representations made about it.

Mr. MACINNIS: May I ask one more question? When can the representative of the Congress speak to the proposed amendments in appendix A?

The VICE-CHAIRMAN: Speak to this?

Mr. MACINNIS: Yes.

The VICE-CHAIRMAN: I do not know when, but he will speak to it when the time arrives. As a result of questioning, he may cover the ground very thoroughly.

Mr. JOHNSTON: Is it understood, Mr. Chairman, that once a brief is given the member who submitted that brief will be recalled for further questioning?

The VICE-CHAIRMAN: Those persons will be available for questioning by the committee immediately after the brief is presented. Because this is the first brief, and in order to give the committee an opportunity of considering these objections of a section of labour, we are having this adjournment and you can ask your questions to-morrow.

Mr. JOHNSTON: I thought it was understood that once a brief was given and questions were asked on that brief, there would be no further submission.

The VICE-CHAIRMAN: That is right.

Mr. JOHNSTON: Is Mr. Conroy coming back to continue with his brief?

The VICE-CHAIRMAN: He will come to to-morrow's sitting to answer questions.

Mr. HOMUTH: We are not going to sit to-night then?

The VICE-CHAIRMAN: If the steering committee decides to sit to-night, then we will have a meeting here to-night.

This committee is adjourned and the steering committe will remain, please.

The committee adjourned at 5.30 p.m. to meet on Tuesday, July 1, 1947, at 10.30 a.m.

APPENDIX A

THE CANADIAN CONGRESS OF LABOUR

DETAILED COMMENT ON THE INDUSTRIAL RELATIONS AND DISPUTE INVESTIGATION BILL. (BILL 338)

Section 2 (1).

(d) In view of the tendency of the courts to place a narrow interpretation on the words of many statutes, the definition of collective agreement should be broadened to include such matters as the check-off and union security.

(e) This paragraph should include provision for negotiations from time to time for settlement of disputes and grievances, the execution of an agreement, and also the amendment of or addition to an agreement. P.C. 1003 included the phrase "in good faith" in the definition of collective bargaining. It seems desirable that this should be retained.

(h) We recommend the addition of the following at the end of this paragraph:

> and without limiting the generality of the foregoing, includes any dispute or difference relating to
>
> (i) wages, allowances or other remuneration of employees or the price paid or to be paid in respect of services, hours of work, vacations with pay, statuory holidays or sickness benefits;
>
> (ii) sex, age, qualification or status of employees;
>
> (iii) employment of children or any person or persons or class of persons, or the dismissal of or refusal to employ any particular person or persons or class of persons;
>
> (iv) claims on the part of an employer or any employee as to whether and, if so, under what circumstances preference of employment should or should not be given to one class of persons over another;
>
> (v) any established custom or usage;
>
> (vi) the subject of check-off;
>
> (vii) union security; and
>
> (viii) the interpretation of an agreement or a clause thereof.

(r) Even taken in conjunction with section 9 (5), which purports to exclude company unions from the benefit of the Act this paragraph is unsatisfactory. We therefore suggest the addition of the following words:

> but shall not include any association, committee or group of employees or any other entity purporting to bargain collectively on behalf of any employees, the formation or organization of which association, committee, group or other, or an agent of an employer, or the administration, management or policy of which has been or is being influenced, coerced, or controlled by an employer or an agent of an employer."

Section 3 (1).

We suggest that this sub-section be replaced by the following:—

(a) Every employee shall have the right to be a member of a trade union, to form, join, or assist trade unions, to bargain collectively through representatives of his own choice, and to engage in concerted activities, for the purpose of collective bargaining or mutual aid or protection.

(b) A trade union and the acts thereof shall not be deemed to be unlawful by reason only that one or more of its objects are deemed by common law to be in restraint of trade.

(c) Any act done by two or more members of a trade union, if done in contemplation or furtherance of a trade dispute, shall not be actionable unless it would be actionable if done without any agreement or combination.

(d) No trade union or employers' organization or other person shall be made a party to any action unless it may be made a party irrespective of the provisions of this Act.

Section 4 (2).

The Congress recommends that the following be inserted as 4 (2):—

No employer, and no person acting on behalf of an employer, shall refuse to permit any duly authorized representative of a trade union with which he has entered into a collective agreement to negotiate with him during working hours for the settlement of disputes and grievances of employees covered by the agreement, or to make any deductions from the wages of any such authorized representative of a trade union in respect of the time so occupied.

Section 4 (3).

The Congress recommends that the following be inserted as section 4 (3):—

No employer or employers' organization, and no person acting on behalf of an employer or an employers' organization shall refuse or fail to bargain collectively, in good faith, as required by this Act, or cause representatives authorized in that behalf to bargain collectively in good faith on his behalf, or required by this Act.

It further recommends that the present section 4 (2) be renumbered as Section 4 (4) and that the following be added as (*c*) and (*d*):—

(*c*) maintain a system of industrial espionage or employ or direct any person to spy a member of proceedings of trade union or the offices thereof or interfere with the exercise by any employee of any right provided by this Act.

(*d*) threaten to shut down or more a plant or any part of a plant in the course of a labour dispute.

The Congress further recommends that section 4 (3) be renumbered 4 (5), and amended by inserting in line 16, after "intimidation", the words "by dismissal"; and by inserting after "to compel", in line 17, the words "or by any such means or by a promise or inducement, to induce".

At line 26, after the word "cause", the words, "subject to the provisions of any collective agreement,". should be added.

Section 5.

The words "acting on behalf of" should be replaced by "authorized by" in line 28. The suggested amendment is in accordance with the wording of P.C. 1003. It is obvious that any individual might be regarded as acting on behalf of a trade union although he has no authority whatsoever to do so.

Section 6 (3) and (4).

See main brief.

Sections 7 to 9 inclusive.

The Congress recommends that Sections 7 to 9 inclusive be deleted and the following paragraphs be substituted:—

> 7 (1) A trade union may make applications to the board stating that a majority of the employees of an employer, or a majority of a unit, classification or classifications of such employees, desire the trade union to bargain collectively on their behalf with their employer, and requesting the Board to certify the applicant as the bargaining agent of such employees.
>
> (2) Pending any application made hereunder, no employer shall make any change relating to the wages or hours of work of any employee affected by such application.
>
> (3) Upon such application, the board shall make such investigation or enquiries as it may deem necessary, including such hearings as it may decide upon, for the purpose of determining, and the board shall determine.
>
> (*a*) whether the applicant is a trade union; and
>
> (*b*) the appropriate unit, classification, or classifications, for the purpose of bargaining collectively, of any of the employees of the employer with respect to whom an application for certification has been made, and the unit, classification or classifications of such employees so determined by the board shall be the bargaining unit hereinunder later referred to; and
>
> (*c*) whether a majority of the employees who constitute the bargaining unit desire the applicant to bargain collectively on their behalf with their employer; and
>
> (*d*) such other question of fact as may relate to such application.
>
> 8 (1) With respect to any application made pursuant to section 7 the board may order or conduct a secret vote of the employees who constitute the bargaining unit to ascertain whether or not a majority of such employees desire the applicant to bargain collectively on their behalf with their employer.
>
> (2) In any event, except as later provided, when with respect to any application the applicant establishes that over twenty-five per cent of the employees who constitute the bargaining unit are either members of the applicant trade union or, within six months prior to the filing of the application, have requested or authorized the applicant to bargain collectively on their behalf with their employer, the board shall conduct a secret vote of the employees who constitute the bargaining unit; provided, however, that, if a collective agreement is then in force between the employer and a trade union, other than the applicant, relating to the bargaining unit or any portion or section thereof, a vote shall be ordered or conducted by the board if the applicant establishes that over fifty per cent of the employees who constitute the bargaining unit are either

members of the applicant, or, within six months prior to the filing of such application, have requested or authorized the applicant to bargain collectively on their behalf with their employer.

(3) If, in accordance with established trade union practice, the majority of a group of employees who belong to a craft by reason of which they are distinguishable from the employees as a whole are separately organized into a trade union pertaining to the craft, such trade union may apply to the Board to certify it as the bargaining agent of such employees. If such group claims and is entitled to the rights conferred by this subsection the employees comprising the craft shall not be entitled to vote for any of the purposes of any application or collective bargaining with such employer except when the application or collective bargaining relates solely to such craft; nor shall such employees be taken into account in any manner in the computation of a majority in respect to any proceeding in which they are not entitled to vote.

(4) Two or more trade unions may join in an application made pursuant to section 7 and may be jointly certified as to the bargaining unit or respectively certified as to such portion of the bargaining unit as the board may determine.

(5) If, on any vote ordered or conducted by the board pursuant to this Act, a majority of the employees who constitute the bargaining unit with respect to which such vote has been ordered or conducted participate in the vote the decision or vote of a majority of the employees so participating shall constitute the decision for all purposes of this Act, of a majority of the employees who constitute the bargaining unit.

(6) If the board is satisfied, whether by a vote or otherwise by investigation or enquiry, that a majority, as provided by this Act, of the employees who constitute the bargaining unit desire the applicant to bargain collectively on their behalf with their employer, the board shall certify the applicant as the bargaining agent of the employees who constitute the bargaining unit, specifying the bargaining unit and the employer.

"9 (1) No application shall be made pursuant to section 7 before ten months have expired of the period of a collective agreement, if any, whether entered into before or after the effective date of this Act.

(2) At any time after the expiration of the ten months referred to in subsection 1 hereof, an application may be made pursuant to section 7, which shall then be dealt with in accordance with sections 7 and 8, and if the board certifies the applicant as the bargaining agent of any of the employees covered by such collective agreement, the trade union so certified shall be substituted as a party to the agreement and may give notice of termination, renewal or proposed amendment of the collective agreement as later provided.

(3) A trade union certified pursuant to subsection (2) of this section may give the employer of the employees for which the trade union has been certified thirty days' notice of its desire to terminate, renew or amend any existing collective agreement covering any such employees, or to negotiate a new collective agreement covering any of such employees, and Section 8 (1) shall apply and be operative thirty days after such notice." The Congress considers section 7 (3) particularly objectionable.

Presumably the intention is to prevent unions from getting certification and then doing absolutely nothing about it, using certification simply as a means of freezing out other organizations, but the subsection, as drafted, is a direct encouragement to employers to go through the motions of negotiating, allow the negotiations and conciliation proceedings to fail, and then enter into a back-door agreement with some other organization, more or less bona fide. The point is illustrated by what happened in the Sitka Spruce case. In any event, the bill should include some such provision as appears at the end of section 5 (2) of order in council P.C. 1003.

Section 9 (3) (a).

The Congress also objects strongly to section 9 (3) (*a*). Where it is a question of one employer only, he is obliged to bargain; there is no proviso that he must consent. Why must all the employers consent if it is a question of more than one? The effect of this would be to make the obtaining of master agreements extremely difficult, if not impossible.

Section 9 (5).

If section 9 (5) is to be retained in anything like its present form, it should be amended in several respects. The wording should be noted as it only disqualifies an employer-dominated union if, in the opinion of the Board, it is (not has been) dominated, or influenced so that its fitness, etc., is impaired. The mere fact that it received the employer's financial support is not enough to disqualify it, and as a matter of practice it may be extremely difficult to satisfy any board that the organization's present policy or administration is dominated by the employer, or influenced by the employer so as to impair its fitness to bargain collectively. Experience under the 1943 Collective Bargaining Act of Ontario indicates that, without satisfactory means of investigation and satisfactory definition, many company-dominated unions were in fact encouraged and assisted by the Act. The subsection should read:—

Notwithstanding anything contained in this Act, no trade union, the formation, administration, management or policy of which is or has been, in the opinion of that board, dominated, influenced, participated in or interfered with or financially assisted by an employer... contrary to the provisions of this Act, etc.

In other words, if it is proven that an employer has dominated or influenced the formation of a trade union, it should not be certified as a bargaining agent. Section 8 (2) of the Wagner Act in the U.S.A., has a similar provision. As it now reads, it would be necessary to prove one of two things in order to show that a union was employer-dominated.

First, that the administration, etc., is dominated by an employer, or second that it is so influenced by an employer as to impair its fitness to represent the employees for the purpose of collective bargaining. It is difficult enough in some cases to prove the first point; proving the second point may present insurmountable difficulties.

The Congress calls attention also to the fact that this subsection uses the word "dominate" instead of "participate" as in section 4 (1).

Section 10 (a).

The Congress recommends that in lines 7-9 the phrase "until the certification of the trade union in respect of employees in the unit is revoked," be deleted.

Section 11.

For reasons given in the Congress' main brief, this section should be struck out.

Section 14 (a).

Line 24. The words "in good faith" should be inserted after the word "collectively."

Section 15 (a).

Line 3. The Congress recommends that the words "in good faith" be inserted after the word "collectively."

Section 18 (b).

The Congress recommends that in line 7 after the word "employer" the words "and agents of the employer" be added.

Section 18.

With regard to section 18, the Congress would direct attention to the fact that, until the passing of P.C. 1003, the law seemed to be that collective bargaining agreements were not enforceable by action like ordinary contracts but were in effect gentlemen's agreements, the breach of which would lead to losing the benefit of the agreement on either side. P.C. 1003 introduced the novel idea of making an agreement enforceable by penalties. In this way it differs from any other contract whatsoever. This section goes further than the ordinary law of contract, because it penalizes every breach of a collective agreement.

Section 19 (1).

With reference to section 19 (1) section 22 (*b*) provides that all employees who are covered by a collective agreement are prohibited from going on strike whatever the issue during the term of the collective agreement. In view of this absolute prohibition against striking on any ground during the term of a collective agreement, it would be expected that the Act would include provisions for the disposition of all disputes which might arise during the period in question. When we examine section 19, however, we find the anomalous situation that, while employees are forbidden to strike, whatever the issue, during the full term of the agreement, this grievance procedure is based upon the narrow formula of "meaning or violation" of the agreement. The result of section 19 is that, if an employee has a grievance in respect of a matter which has not been specifically dealt with by the agreement, he cannot force the employer to supply a remedy by means of the grievance procedure for the consideration and disposition of the grievance, notwithstanding that he, the employee, is forbidden to strike in respect of same. It may be feasible in some industries, particularly where collective bargaining has been in effect over an extended period, to include provisions in the collective agreement which will cover every conceivable dispute or grievance. On the other hand, in other industries, and particularly where collective bargaining has functioned only in recent years, no such exhaustive agreement is possible. The result is that an employee is without any remedy, though he is bound by the Act against striking, in respect of a grievance which has not been anticipated by some specific provision of the agreement.

The Congress therefore recommends that at the end of section 19(1), after the word "thereof" the following words be added:—

> or any other grievance affecting the terms of employment or working conditions of any employee or group of employees.

This might involve consequential amendments to Section 19 (2).

Section 19 (*2*).

The Congress recommends that in line 19, after the words "by order" the following be inserted:—

> after giving notice to the parties concerned and giving them an opportunity to submit representations.

Section 19 (*3*).

The Congress recommends that the following be inserted as section 19(3):—

> When a bargaining agent has been certified under this Act, and pending the conclusion of a collective agreement, the following grievance procedure shall be regarded as being in effect between the parties concerned, unless modified by mutual consent within a period of thirty days after the date of certification:—
>
> (*a*) The union shall appoint, and the employer shall recognize, a grievance committee of not fewer than three members of the union and not more than a number of plant divisions or departments in the employer's establishment.
>
> (*b*) Should any grievance arise between the employer and the union, or any of its members, or any other employees included in the bargaining unit, an earnest effort shall be made to adjust such grievance forthwith in the following manner:—
>
> (i) Between the aggrieved employee and the foreman of the department involved, a decision to be rendered by the foreman within two full working days. Failing a satisfactory decision:
>
> (ii) Between a member or members of the grievance committee and the chief supervisory officer of the employer in charge of personnel, if any, or any other officer whom the employer shall designate for this purpose, a decision to be rendered by such officer within three full working days. Failing a satisfactory decision:
>
> (iii) Between the grievance committee and a representative or representatives appointed by the employer for this purpose, a decision to be rendered within five full working days. Failing a satisfactory decision:
>
> (iv) By a Board of Conciliation.

The reason for this proposal is as follows:—Cases have arisen in which, after certification had been granted, an employer has gone through the motions of negotiating, but has dragged out the proceedings until a large number of the union's members became discouraged by the delay and the total absence of concrete benefits from certification and union membership, and left the union, and the employer then used such evidence of this as he could get as a reason for refusing to continue negotiations. The Congress feels that some provision should be made for the immediate handling of grievances subsequent to certification, both from the standpoint of protection of the employess concerned, and the promotion of harmony within the plant, which would facilitate the conclusion of the agreement under negotiation.

Section 21.

The Congress recommends that in lines 5-7, the words "shall not take a strike vote . . . employees in the unit" be struck out, for reasons given in the Congress' main brief.

Sections 23 and 24.

See main brief.

Section 25.

In this section there is no recognition of the difficulty there might be in drawing the line between an obvious lockout and a lay-off motivated chiefly or in part by the desire to intimidate or discourage employees from organizing or negotiating. Cases of the latter kind have been before the boards recently.

Section 26.

The Congress recommends that section 26 be deleted on the ground that it does not establish any right which is not generally admitted, and it constitutes an invitation to an employer to by-pass any certified bargaining agent. It is noteworthy that there was no such provision in P.C. 1003. If, however, it is felt that something should be inserted in the legislation along these lines, we recommend the following:—

> Notwithstanding anything contained in this Act, any employee may present a grievance to his employer at any time through the certified bargaining agent in accordance with the provisions of any collective agreement in force between the employer and the said agent, and where no bargaining agent has been certified any employee may himself present a grievance to his employer at any time.

Sections 27 - 37.

See main brief.

Sections 39- 46.

See main brief.

Sections 53 - 55.

See main brief.

Section 61. (1)

Under P.C. 1003, Section 25, the introductory phrase was: "If in any proceeding under these regulations." The corresponding phrase here would be: "If a question arises under this Act". The present wording appears to be much more restrictive, especially in view of the elimination of subsection (2) of section 25 of P.C. 1003, relating specifically to court proceedings. The courts might hold that, under the present wording, the board's decision is final and binding only for proceedings before the board itself, and that a magistrate, judge or court is not obliged to pay any attention to it at all. For further comment on this question, see the Congress' main brief. The Congress recommends the addition of subsections giving the board power to decide whether an employer or a union has been guilty of an unfair labour practice, to issue "cease and desist" orders (with adequate machinery for enforcement as proposed in the Congress' main brief), and to disestablish company unions. The Congress also recommends the addition of a further subsection as follows:—

> There shall be no appeal from an order or decision of the board under this Act, and the board shall have full power to determine any question of fact necessary to its jurisdiction, and its proceedings, orders and decisions shall not be reviewable by any court of law or by any certiorari, mandamus, prohibition, injunction or other proceeding whatsoever.

Section (61) (1) (c).

Paragraph "*d*" of section 25 (1) of P.C. 1003 has been omitted. It is not clear whether the new paragraph (*c*) covers the point.

Section 62.

"Substantially uniform" is not defined.

Section 67 (1) (b).

See main brief.

The Congress recommends that parliament consider embodying in this legislation a provision similar to the Alberta Labour Act's section 80 (2), so that if the parties to a dispute accept the report of a conciliation board, the terms of the report shall be retroactive to the date of the application for intervention, also a provision similar to the Alberta Act's section 75 (7), empowering the minister to remove, and make arrangements to replace, any conciliation board member who, in the minister's opinion is unduly or unncessarily deferring or delaying proceedings.

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Canada. Industrial Relations, Standing Cttee on, 1947

Law R.R.

SESSION 1947
HOUSE OF COMMONS

STANDING COMMITTEE
ON
INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 3

TUESDAY, JULY 1, 1947

WITNESSES:

Mr. Percy R. Bengough, President, The Trades and Labour Congress of Canada;

Mr. W. T. Burford, Secretary-Treasurer, The Canadian Federation of Labour;

Mr. Ernest Smith, Special Representative, The Canadian Federation of Labour;

Mr. W. J. Sheridan, Manager, Economic Development Branch, Canadian Chamber of Commerce;

Mr. O. H. Barrett, Committees on Legislation and Industrial Relations, Canadian Manufacturers Association;

Mr. A. K. Thompson and Mr. H. Shurtleff, Legal Department, Canadian Manufacturers Association.

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MINUTES OF PROCEEDINGS

TUESDAY, 1st July, 1947.

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. Mr. Croll, the Vice-Chairman, presided.

Members present: Messrs. Adamson, Archibald, Baker, Beaudoin, Charlton, Cote (*Verdun*), Croll, Homuth, Johnston, Knowles, Lafontaine, Lapalme, Lockhart, MacInnis, Maloney, Maybank, Merritt, Mitchell, Ross (*Hamilton East*), Sinclair (*Vancouver North*).

The Chairman read the second report of the steering committee.

On motion of Mr. Lafontaine, the said report was concurred in.

On motion of Mr. Homuth.

Resolved,—Notwithstanding the time limitation for the hearing of presentations in the motion passed by the Committee on Wednesday, 25th June, that all invited organizations or groups be heard.

It was agreed that a brief submitted by the Canadian Construction Association be taken as read.

It was agreed that the following be printed as appendices in the records of the Committee:—

(i) Letter dated 25th June, 1947, from the President, Nova Scotia Barristers' Society; (See appendix "B").

(ii) Resolution dated 25th June, passed by the Vancouver Bar Association; (See appendix "C").

(iii) Telegram dated 27th June, from the Secretary, Victoria, B.C. Bar Association; (See appendix "D").

(vi) Telegram dated 25th June from the Attorney-General, Nova Scotia; (See appendix "E").

(v) Letter dated 21st June signed by the Secretary of the Law Society of Upper Canada, Toronto. (See appendix "F").

On motion of Mr. MacInnis.

Ordered,—That a brief submitted on the 27th June by the Shareholders' Institute, be referred for consideration of the Steering Committee.

Mr. Percy R. Bengough, President, The Trades and Labour Congress of Canada, was called. He read a prepared brief and was questioned.

The witness was retired.

Mr. W. T. Burford, Secretary-Treasurer, and Mr. Ernest Smith, Special Representative, The Canadian Federation of Labour were called. They made a joint statement and were questioned.

The witnesses were retired.

The Committee adjourned at 12.30 o'clock p.m., to meet again this day at 4.00 o'clock p.m.

The Committee resumed at 4.00 o'clock p.m. The Vice-Chairman, Mr. Croll, presided.

Members present: Messrs. Adamson, Archibald, Baker, Beaudoin, Charlton, Cote (*Verdun*), Croll, Homuth, Johnston, Knowles, Lafontaine, Lapalme, Lockhart, MacInnis, Maloney, Maybank, Merritt, Mitchell, Ross (*Hamilton East*), Sinclair (*Vancouver North*), Timmins.

Mr. W. J. Sheridan, Manager, Economic Development Branch, Canadian Chamber of Commerce, was called. He read a prepared brief and was questioned.

The witness was retired.

Mr. O. H. Barrett, Committees on Legislation and Industrial Relations, Canadian Manufacturers Association, was called. He read a prepared brief and was questioned. Mr. A. K. Thompson and Mr. H. Shurtleff, Legal Department of the Canadian Manufacturers Association, assisted during the questioning.

The witnesses were retired.

The Committee adjourned at 5.50 o'clock p.m., to meet again at 4.00 o'clock p.m., Wednesday, 2nd July.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS

July 1, 1947.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Vice-Chairman, Mr. D. A. Croll, presided.

The VICE-CHAIRMAN: Gentlemen, there is a quorum present.

We have here the report of the steering committee:—

REPORT OF THE STEERING COMMITTEE

MONDAY, 30th June, 1947.

Your steering committee met Monday, 30th June, and considered:—

(*a*) Applications to appear and make representations on bill No. 338.

(*b*) Resolutions, telegrams and letters making representations to the committee.

(*c*) Future sittings of the committee.

The chairman was directed to invite the following organizations:—

(i) Dominion Joint Legislative Committee, Railway Transportation Brotherhood;

I think we overlooked them originally.

(ii) The Canadian Federation of Labour.

In reviewing other applications, it was found that invitations to appear have already been sent to parent bodies of these groups.

Accordingly, it is recommended that only national organizations or groups be heard. It is considered this will provide representation for all.

It was agreed that written representations received to date be referrred to the committee, recommending that they be printed as appendices in the records.

It was agreed to recommend the following program for future sittings:—

(*a*) That meetings be held Mondays through Fridays, excepting Wednesday, at 10.30 a.m. to 12.30 p.m., and from 4.00 p.m. to 6.00 p.m.

(*b*) On Wednesday, the committee to meet at 4.00 p.m. to 6.00 p.m. and from 8.00 p.m. to 10.00 p.m.

(*c*) Other sittings to be called as considered necessary by the chair.

All of which is submitted.

(Sgd.) D. A. CROLL,
Vice-Chairman.

Moved by Mr. Lafontaine, seconded by Mr. Jutras, that the report of the steering committee be concurred in.

Carried.

Hon. Mr. MITCHELL: Mr. Chairman, I just want to say this to you; there was no slip-up on my part when I moved that motion. I mentioned what we called "running trades" as you remember.

Mr. MACINNIS: I think there was just a little confusion as to what you were referring to.

Hon. Mr. MITCHELL: Yes, probably that was it. They are one of the oldest railway organizations.

Mr. MacInnis: The confusion I think was with the Canadian Brotherhood of Railway employees. It was mentioned by you.

Hon. Mr. Mitchell: That was in my mind, clearly; that they should be invited. They are one of the oldest railroad organizations which have ever come under federal jurisdiction; they have been under federal labour laws ever since their inception. I would like to have it pointed out very clearly that they were not overlooked deliberately by this committee.

The Vice-Chairman: No. I said that there was some misunderstanding. The minister corrects me by saying that there was confusion. That is all right.

We have some briefs here—

Mr. Homuth: Mr. Chairman, before we go on to that; the motion that was made the other day was in fact that we should hear briefs on Monday and Tuesday. The fact of the matter is that I do not think that we are going to be able to get through all the briefs on Monday and Tuesday.

The Vice-Chairman: It is not limited.

Mr. Homuth: Oh yes, it was limited. I was reading the Minutes of Proceedings this morning and it is set out clearly that briefs will be heard on Monday and Tuesday.

The Vice-Chairman: Is that what it says?

Mr. Homuth: It sets out clearly "Monday and Tuesday."

The Vice-Chairman: Well, we are not going to be able to get through.

Mr. Homuth: No, I think that there should be either a tacit understanding or the motion should be amended.

The Vice-Chairman: I think the understanding, Mr. Homuth, was that we would not likely get through the hearing of witnesses on Monday and Tuesday and that the period should be extended.

Mr. Homuth: That can be done by way of motion or amendment to the motion.

The Vice-Chairman: Will you move such amendment?

Mr. Homuth: I will move in amendment that the time for receiving of briefs be extended.

The Vice-Chairman: Mr. Homuth moves that notwithstanding the resolution adopted by the committee the other day that we extend the time for the hearing of briefs from national organizations.

Carried.

I have here this morning some representations and resolutions from the bar associations of Ontario, Nova Scotia, British Columbia, and also the bar association of Vancouver. We will have these added as appendices to the record. That was the understanding. Is that agreeable?

Carried.

I also have here this morning a brief from the Canadian Construction Association. They are one of the national groups invited to make a submission and they say:—

June 30, 1947.

The Chairman and Members,
Industrial Relations Committee
of the House of Commons,
Ottawa, Canada.

Gentlemen,—In reply to your telegram of June 25th, I should like, on behalf of the Canadian Construction Association, to express our appreciation of your invitation to make representations in respect to Bill 338, An Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes.

In previous submissions to the Minister of Labour concerning P.C. 1003 and an earlier draft of the present legislation, this Association emphasized three principles which it considers essential to successful labour relations. These are:—

(1) Mutual agreement is fundamental to real agreement. Therefore, provisions regarding union security, such as the closed shop and the check-off, should be the result of free negotiation and not of legislative compulsion.

(2) The bargaining agent should clearly represent a majority of the employees in the employees' unit for which it is to bargain.

(3) Responsibility to observe the law in labour matters should be equal on both employers and employees.

It is apparent that Bill 338 is intended to incorporate the first two of these principles and that it goes further than previous legislation with respect to the third principle. On these grounds it is to be commended as progressive legislation. At the same time, we feel serious consideration should be given to the desirability of the incorporation of trade unions to assure a greater measure of union responsibility.

In accordance with well-established practice, agreements in the construction industry are signed between employers' associations and trade unions in local areas and are not national in character. Therefore the legislation will not apply to this industry, except in those provinces which see fit to pass implementary legislation.

The record of relations existing between employers and members of skilled trades unions in the construction industry in Canada for over 40 years has been a singularly happy one. Strikes in the industry have been relatively few. It is a tribute to employees, as well as to employers in the construction industry that, during the war and since, there has been little occasion to resort to the provisions of P.C. 1003. Should any of the provinces decide to implement the provisions of Bill 338, our view is that this legislation contains basic principles on which sound labour relations can be established. Experience under the legislation, after it becomes law, may indicate a need for some revision from time to time.

This Association favours national uniformity in labour legislation of this kind. In the event of implementary legislation by any of the provinces for the purpose of providing such uniformity, we feel that organizations of employers and employees would wish to be given the opportunity of making representations to those provinces. Such representations would concern local conditions which would call for amendment or revision in matters of detail without interfering with basic uniformity.

Under the circumstances, we feel that this submission will serve your purpose and that we would not be justified in taking up your valuable time with a verbal presentation.

Respectfully submitted,

CANADIAN CONSTRUCTION ASSOCIATION

R. S. JOHNSON,
General Manager.

I suggest this be part of the record instead of the appendix. Copies will be distributed in due course.

I also have here this morning a one-page memorandum from the Shareholders' Institute of Canada, Toronto. I have no conception of whom or what they represent but the submission is in connection with this bill and I suggest we put it in a part of the appendix.

Mr. MacInnis: What have they get to do with the bill? I do not think we should just put in any briefs that may come along.

Hon. Mr. Mitchell: May I make this suggestion? If you are going to make a part of the record the submission of everybody who thinks he is able to cure the labour laws of this nation, you are going to have a very big record. I think we have already decided to deal with the national organizations only.

Mr. MacInnis: I move that brief be left over until the next meeting of the steering committee.

The Vice-Chairman: All right.

Our intention was this morning to continue hearing Mr. Conroy. I have had a few members suggest to me that until such time as the second appendix is filed we are not in a position to properly question, and I suggest to the committee that we not proceed with the examination of Mr. Conroy this morning. I have indicated to Mr. Conroy that we are not likely to continue our examination of him but that we will continue to hear some of the other briefs until his second appendix is filed.

Now we have the Trades and Labour Congress of Canada whom we will hear, and next there is the Canadian Federation of Labour. This afternoon we will have the Canadian Chamber of Commerce and the Canadian Manufacturers' Association. On Wednesday we will have the Railway Association of Canada and the Joint Legislative Brotherhood. We have the Canadian Catholic Federation of Labour Society but we have not received a reply from them.

I will now call upon Mr. Bengough.

Percy R. Bengough, President, The Trades and Labour Congress of Canada, called:

The Witness: Mr. Chairman and gentlemen, we appreciate the opportunity of appearing before you to-day to present the views of The Trades and Labour Congress of Canada in respect to Bill 338, an Act to provide for the investigation, conciliation and settlement of industrial disputes.

You will find attached a copy of a circular which was mailed under the date line of December 12, 1946, to the fifty-three trades and labour councils and three thousand odd locals of international, national and directly chartered unions affiliated to this Congress.

It will be noted that the objective was the securing of a national labour code which would retain the basic principles of order in council P.C. 1003 with specified changes.

At the time of the issuance of this circular the position of the provincial governments in relation to the adoption of a national labour code had not been definitely finalized. Since that date many provincial governments have clarified their position and have enacted to a lesser or greater degree provincial laws covering the right of employees to organize and bargain collectively through an organization and representatives of their own choosing.

Such being the facts, then we have to judge the contents of Bill 338 in the light of things as they are and not as to how we would like them to be. It is with such views in mind that we do not condemn Bill 338, because of its limited application in that roughly it covers only the field formerly covered by the Industrial Disputes Investigation Act, 1907. We would have much preferred an all embracing national code, but as it is not yet within the jurisdiction of the dominion government to meet our requirements in this regard, we accept Bill 338 as a step n the right direction. It is our considered opinion that Bill 338 retains the basic principles of order in council P.C. 1003 in that it establishes the right of employees to organize in a union of their own choice and prohibits the employer from interfering with that right.

The other changes that we requested in order in council P.C. 1003, as set out in the attached circular, have been fairly met in Bill 338.

We are also attaching for your information a copy of a press release that was issued under the date line of June 19, 1947, and mailed to our affiliated provincial organizations, trades and labour councils and general representatives. This sets out the views of The Trades and Labour Congress of Canada on the various clauses of particular concern to the many thousands of organized workers affiliated to The Trades and Labour Congress of Canada.

We do not feel that it is necessary to enlarge upon this outside of the following:

In respect to section 32, paragraph 8, of Bill 338: This section, previously contained in the Industrial Disputes Investigation Act, 1907, was demonstrated in actual operation over many years to be of value in that the parties appearing before the board had direct knowledge of the industry and were more concered and anxious to reach finality and generally dealt with the questions at issue more from a common sense and humane point of view. In operation the objectives of order in council P.C. 1003 were at times unduly prolonged and sometimes lost sight of in the confusion raised by the submission of legal arguments for and against what was originally intended in the Act and ofttimes muddied the very issues that the board was formed to clarify. The Trades and Labour Congress of Canada has the highest regard for our friends in the legal fraternity. We give them all credit in the strong trade union with real closed shop conditions that they have built and maintained, but we are strongly of the opinion that in the field of labour relations that legal training has proved itself more of a detriment than an asset.

Regarding section 8, this is designed to give recognition to groups of employees who belong to a craft or group exercising technical skills by reason of which they are distinguishable from the employees as a whole, and who are members of a trade union of their craft. There is apparently a wrong impression in some industrial union quarters that this provision is a menace to such organizations. The fact remains that a similar provision has been retained in the British Columbia Act respecting the right of employees to organize and providing for conciliation and arbitration of industrial disputes for the last ten years. In operation it has not hindered labour organizations formed and operated on industrial lines, and has been of benefit to the established craft unions.

In view of the foregoing, we are prepared to accept the provisions of Bill 338 as it now stands. We realize that it is legislation of a contentious nature and that it would be an impossibility to draft a law covering the scope of Bill 338 that would meet unanimous approval even of those directly affected, to say nothing of the many who do not come under the Act yet but who are already strongly condemning it. We feel that Bill 338 is a good step in the right direction. We trust that it will become law this session. A great deal of its success or failure in operation will, of course, depend on its administration. Undoubtedly weaknesses will be discovered, and The Trades and Labour Congress of Canada will not hesitate to seek the necessary amendments. In the meantime, on behalf of The Trades and Labour Congress of Canada we accept Bill 338 as worthy of enactment.

(Sgd.) PERCY R. BENGOUGH,
President.

JOHN W. BUCKLEY,
Secretary-Treasurer,

THE TRADES AND LABOUR CONGRESS
OF CANADA.
On behalf of the Executive Council.

Shall I read the enclosures?

The VICE-CHAIRMAN: Yes, go ahead.

The first enclosure I made reference to was addressed to the officers and members of all affiliated organizations of the Trades and Labour Congress of Canada, and was sent out under date line of December 12, 1946.

OTTAWA, ONTARIO,

December 12, 1946.

To the Officers and Members of all
Affiliated Organizations of
The Trades and Labour Congress of Canada.

GREETINGS,—The workers' way to jobs and security is to maintain and improve, when necessary, Labour laws that protect their rights and allow for advancement. Order in Council P.C. 1003, which was introduced under the War Measures Act in 1944, definitely came under this category. P.C. 1003 will cease to operate early in 1947. What, if anything, will take its place is organized labour's $64 question.

An all out war effort demanded a national labour code. A peace effort also requires a national labour code. The Trades and Labour Congress of Canada and its affiliated organizations campaigned for years for dominion legislation that would assure the workers the right to organize and bargain collectively through the medium of a union of their own choice, not one on a provincial bits and pieces basis but on a national unity basis—a labour code for all Canadians.

The time for concerted action has arrived if we are to have a worthwhile national labour code. All Trades and Labour Councils and affiliated unions must now become active. They should hold special meetings to discuss and consider this important question. Committees must be appointed to go thoroughly into the matter. Provincial governments must be approached and impressed with the need of reaching agreement with the dominion government for the establishment of a national labour code. Supporting a basic national code does not mean that provinces with better labour codes will have to give up any of their improved legislation.

As more fully explained in an editorial in the November 1946 issue of The Trades and Labour Congress *Journal.* "Need for a National Labour Code," the basic principles of P.C. 1003 must be retained in the dominion labour code with the following changes:—

Company unions must be definitely prohibited.

The union concerned should be named as the bargaining agency and not individuals.

Where all employees of an employer or organization of employers are required by agreement to be members of a specified union, there should be no provision in the law tending to prevent.

In all cases in which both the employers and employees agree, there should be no interference either in their reaching or changing the provisions of an agreement.

The regulation requiring that 51 per cent of the employees must vote for the union should read "51 per cent of the votes cast," in the same manner as all democratic elections.

A clearer definition is also required of who is to be excluded from the bargaining agency so as to prevent the past procedure of excluding thousands of bona fide employees on the pretext that they are employed in a confidential capacity and outside of the benefits of the Act.

Organized labour believes in national unity. Your dominion and provincial members of parliament must be impressed with the need for the enactment of a national labour code in the interests of labour and industrial peace and harmony.

Your full cooperation is necessary.

Fraternally yours,

(*Sgd.*) PERCY R. BENGOUGH
President.

THE TRADES AND LABOUR CONGRESS OF CANADA.
On behalf of the Executive Council.

The other document referred to was a press release which was also sent out. It reads:—

June 19, 1947.

> The Trades and Labour Congress of Canada believes that one of the first steps towards national unity is uniform labour and social laws throughout the dominion. Naturally we would much prefer and will continue to strive for a national labour code.
>
> Bill 338, an Act to provide for investigation, conciliation and settlement of industrial disputes, which received its first reading before parliament June 17, 1947, does not meet this requirement in that its application is limited to industries, undertakings of an interprovincial character and such works as are declared by the parliament of Canada to be to the general advantage of Canada, or for the advantage of two or more provinces, and outside the exclusive legislative authority of any province.
>
> In view of this limited scope, the formulation of regulations governing the vast majority of Canadian workers is left to the mercy of the various provinces. However, it must be fully recognized that the limitation is not chargeable to the dominion but emanates from provincial governments who desire to retain all of their old time autonomy, even in face of modern methods and needs of Canadian economy. Such being the position, then the Congress has to judge bill 338 on its merits and to the extent that it embodies our requests for inclusions and deletions.
>
> First, we asked that the basic principles of P.C. 1003 be retained in the dominion labour code. Bill 338 meets this requirement with improvements.
>
> We requested that company unions be definitely prohibited. Section 4, Paragraphs 1, 2 and 3, while not definitely prohibiting company unions, certainly makes their existence insecure and their operation and recognition difficult.
>
> We maintain that the union concerned should be named as the bargaining agency instead of individuals. Bill 338, Section 7, and other sections, fully meets these requirements.
>
> Section 8, in affording protection to crafts or groups exercising technical skills, is both justifiable and necessary.
>
> This Congress also requests that where all employees of an employer or organization of employers are required by agreement to be members of a specified union, there should be no provision in the law tending to prevent. Section 6, subsection 1, meets our request in this respect. However, subsection 2 of the same section is somewhat of a negation and should be eliminated.
>
> We request that in all cases in which both the employer and employees agree there should be no interference in their reaching or changing the provisions of an agreement. Section 20, subsection 2, meets this requirement.

We protested the old regulation of order in council P.C. 1003 which required that 51 per cent of the employees must vote for the union should read " 51 per cent of the votes cast" in the same manner as all democratic elections. Section 9 is a distinct improvement and meets our wishes.

We also asked for a clearer definition of employee and as to what employees should be excluded. We requested that only employees brought into consultation on matters of the employers' labour policy should be termed confidential employees. Part I clarifies this in a satisfactory manner.

We desire to commend the government for the inclusion of section 32, paragraph 8, in bill 338, embodying a provision formerly contained in the original Industrial Disputes Investigation Act which discourages the wholesale use of lawyers, which provision proved so beneficial in reaching finality in the Industrial Disputes Investigation Act and the absence of which was so disheartening in prolonging the agony in hearings under P.C. 1003. The balance of the bill is a distinct improvement on order in council P.C. 1003.

We are definitely of the opinion that bill 338 is worthy of support. It is quite possible that in operation weaknesses will be found that will require amendment. A great deal depends on its administration. Past experiences of this Congress have shown that poor legislation sympathetically administered has ofttimes been better than good legislation administered in a hostile manner.

The fact that the board of administration will not exceed eight members, comprised eqally of representatives of employees and employers with a government appointed chairman is a good provision. The provisions covering the appointment of boards of conciliation are in accord with proven good procedure, being composed of representatives from each party to the dispute who jointly choose a chairman and, on failure to do so, the third party is appointed by the minister.

The executive council of The Trades and Labour Congress of Canada, after due and careful consideration of all features and for the reasons previously set out, commend the government for the introduction of bill 338 and would recommend that all provinces enact legislation of equal value.

(Sgd.) PERCY R. BENGOUGH,
President,

The Trades and Labour Congress
of Canada
On behalf of the Executive Council.

The VICE-CHAIRMAN: Gentlemen, you have heard the presentation made. Do you wish to ask Mr. Bengough any questions on any portion of the brief? If so, he is now available to you.

By Hon. Mr. Mitchell:

Q. What is the coverage of your organization as embodied in the present bill? To what extent does the bill cover the organizations embodied in the brief affiliated with the Trades and Labour Congress of Canada?

Mr. LOCKHART: I was going to ask how many union members it would represent.

The WITNESS: Offhand I could not give you those figures. There is a considerable number, of course, of our membership who would come under the bill. We hope that those in the harbour boards and things like that, which are matters of doubt in some respects, will be covered. Then there are the railroad workers and, of course, the workers in the public utilities. It runs into a considerable number. I could give you those figures, but I have not them with me.

Mr. LOCKHART: You have not the approximate number of union members that you represent, anywhere within two or three thousand? That would be near enough.

The VICE-CHAIRMAN: Make a guess at it.

The WITNESS: I will take a shot at it and say it would be between 90,000 and 100,000.

By Mr. Lockhart:

Q. That your organization represents?—A. I might be wrong one way or the other.

By Mr. Timmins:

Q. You mean the number of workers in respect of this bill?—A. I am talking about the bill, those that it would cover.

Mr. MACINNIS: May I ask the minister if he has any information as to how many persons, how many trade unions are covered by this?

Hon. Mr. MITCHELL: That is trade unions as such or possible trade unions?

Mr. MACINNIS: Employees.

Hon. Mr. MITCHELL: About a quarter of a million.

By Mr. MacInnis:

Q. I listened carefully to the brief and to the press release which is almost the same wording as the brief, but as to the document which came in between, the letter sent out on December 12, 1946, to the affiliates [illegible] the Trades and Labour Congress, it appears to me that it indicates that the bill falls far short of what you desire?—A. In that it is not a national code?

Q. In that it is not a national code and various other points in it.—A. I think the main feature where it falls down is on the basis that it is not a national code. We have covered that angle pretty well. That is a matter where you have to get the provincial governments to decide. Since that time there have been a number of provincial governments which have enacted legislation, some better and a lot of it worse.

By Mr. Homuth:

Q. As a layman perhaps I might ask this question better than some of the lawyers around the table. You have given considerable attention to subsection 8 of paragraph 32 with respect to the use of lawyers. As you know the clause itself does not bar lawyers provided all parties to the dispute agree.

Mr. MACINNIS: And the board.

By Mr. Homuth:

Q. Yes, the board has the final say. Would you like to go more fully into your statement with regard to lawyers and give some explanation as to how you have found it working out.—A. Under the old Industrial Disputes Investigation Act there was a provision very similar to what is set out here in this bill, that if either side objected legal representation would not be allowed. It is identical pretty much with what is in here. It was found in operation that it was one of the best features of the bill. There is nothing unique in keeping the legal fraternity of labour legislation, shall I say. They are effectively kept out of the workmen's compensation laws. They used to be in that, but after a case was settled and the award made we used to wonder who had really met with the injury or the accident. They had to bring in legislation keeping them out so that the man who had suffered from the accident had some of the money instead of giving it all to the doctor and the lawyer. That is the way it worked out. Really it proved to be an advantage.

We have found, and I think it was demonstrated under P.C. 1003—and I do not say that it emanated entirely from a desire to stall the job along and get a higher fee so much as from the fact that the legal man was hired for the job and he wanted to win the case—that a lawyer cannot come and talk and get down to the place where they can do any trading because his job is to win the case for those who hire him. Therefore they come in, split all kinds of straws and raise arguments with the idea of winning the case. We have found that the principals to the dispute, that is, both employers and employees, were able to be a little more flexible and were not so anxious on the basis that they had a case to win or else lose their reputation. They are anxious to get back to work, to get the job started. In operation it worked out better in most of the hearings under P.C. 1003. All we ask is that the same thing be put back in this bill that has operated satisfactorily for years in the old Industrial Disputes Investigation Act and was never questioned.

By the Vice-Chairman:

Q. You do know that since 1944 under P.C. 1003 the board has not prohibited lawyers from appearing before them, and they have appeared without any objection since that time? You do know that?—A. That is why we raise the objection here.

Q. You do know that?—A. Yes.

Q. In addition to that you do know that in the various law schools in the country they have as a part of their course labour legislation, and in the universities—

Mr. HOMUTH: Would you speak out?

The VICE-CHAIRMAN: You had better speak up.

Mr. MACINNIS: It is you he means.

By the Vice-Chairman:

Q. You know that in the various law schools of the country and in the universities they are teaching labour legislation to the lawyers and to students?—A. Yes.

Q. Then you spoke of some of your workers under the harbour board. You appreciate that under this Act they may well be excluded?—A. There is a possibility but I think, actually, the general opinion is that they would be excluded.

The VICE-CHAIRMAN: I just said that they may well be included under section 54.

By Mr. MacInnis:

Q. What you say in regard to the Harbour Board would apply to all Crown companies where your workers are employed; you think they should be included?—A. Yes, without question it would be better if it were stated definitely that they would be in.

By Mr. Timmins:

Q. I presume you would agree, if you were appearing yourself for a union in respect of a matter which was under consideration, you would consider yourself, as a labour man, an expert on labour affairs?—A. I would not say that, no.

Q. May we suppose that you would not consider it unfair that a small firm or small group of employers, in the same way, be represented by somebody who might be an expert on their behalf? Would you not consider that fair?—A. So far as the small firms are concerned, there are not many of them who would come under this bill the way it is now.

Q. I am suggesting to you, if it is fair for one group to be represented by labour organizers, men who are experts— —A. I never admitted they were. You asked me if I was and I said no.

Q. Without being personal about it, we all agree you are. I am suggesting, on the other side, that as labour matters are growing in public interest that it is in the public interest both sides should be represented by those who are experts. As the chairman has just mentioned, law schools throughout the dominion are concentrating their efforts, expanding their efforts, in respect of labour legislation so lawyers are becoming, comparatively speaking, as expert as labour organizers in respect of labour matters. Do you see any reason why those potential labour representatives who, at the same time, are lawyers, should not appear in the same capacity as yourself or those associated with you?—A. I think the legal fraternity have the wrong idea. This legislation is to provide legislation for the settlement of industrial disputes. The idea the lawyers seem to have now is that it is legislation to provide employment. It does not come under that category.

Q. Speaking for myself, I can remember that many firms for whom I worked over a period of years had no labour trouble and had no experience in labour matters. Do you think that they, dealing under a comprehensive Act such as this ought not to have the benefit of some experienced counsel to assist them in respect of the matters in dispute?—A. Well, if the other side did not object, they would be able to have them there the way the Act is now. Lawyers were not always debarred under the old Industrial Disputes Investigation Act. Sometimes they were there. If the other party objected, then they were not. What more do the lawyers want than that?

By Mr. MacInnis:

Q. Mr. Timmins asked you, I think, if you would appear as a labour representative before a board and he suggested that you would know something about the question at issue. You would have no objection to the secretary of the Canadian Chamber of Commerce or the secretary of the Canadian Manufacturers' Association appearing for an employer in labour disputes?—A. No, we would not have any objection.

Q. They would be put on the same basis then as your organization?—A. It seems to me we used to have them when I was doing some work for you.

By Mr. Ross:

Q. Would you object to the Chamber of Commerce being represented by a lawyer?

The VICE-CHAIRMAN: He might; he could if he wanted to do so. You do know that the chairman of the National War Labour Board is a very estimable lawyer. You are satisfied with him there?

The WITNESS: I suppose so, yes.

By Mr. Merritt:

Q. I should like to ask a question of Mr. Bengough. He said, when he was answering Mr. Homuth I think, that it was advantageous to have the principals to the dispute at the actual bargaining and the conciliation. I can see some force to that argument. One thing to which I should like to call your attention is that section 32, subsection (8), does not require the principals to the dispute to conduct the conciliation. It only requires that anyone can do it except lawyers. Are you not going to create a new type of lawyer called an industrial relations counsel or something like that? There may be someone who was not called to the Bar or who may have been disbarred; he may be thoroughly trained in the law; he may go to Osgoode Hall and take the course to which the chairman has referred with the intention of practicing under the title of industrial relations counsel. He may have all the wickedness and weaknesses of a lawyer and all the skill of a lawyer, but simply because he is not recognized by the law society, you have no objection to him. Then, you may have others even without that training whose business it is to represent firms or unions in conciliation procedure. They will have the same interest in winning the case, to use your own term, as any lawyer would have.

I am suggesting to you that in this section you are not accomplishing what you, yourself, said to be the ideal situation that the bargaining should take place between the principals. Would you comment on that?—A. I can only say, as I stated before, that in operation under the old Industrial Disputes Investigation Act, it worked out very satisfactorily over many years. A clause with identical phrasing was in that act. This clause has been lifted out of the Industrial Disputes Investigation Act of 1907. It worked very well. I can hardly agree with you when you say that if we had a lawyer we would not object to one who was not in the union. We would object on general principles there.

Q. You might object, but the section would not prevent him from appearing. If one party insisted that he appear, you could not stop him?—A. We would not want to go ahead with the case. We certainly would not favour non-union lawyers.

By the Vice-Chairman:

Q. In view of the fact that you recognize us as a union and a closed shop you would not want to start a jurisdictional strike, would you?—A. They have started it on us many times. How many years has the Industrial Disputes Investigation Act been in force?

Q. 1907.—A. During the whole of that time this was not a feature which caused any trouble. I cannot see how it is going to do any harm here.

The Vice-Chairman: I do not quite agree with you. It was not a feature because labour legislation was not a feature in those days. In modern times, labour legislation is a definite feature. There are some people who are expert at it; some who are very capable; some who make a study of it. It seems that the people who are experts are to be given an opportunity of making themselves available if they are desired, that is all.

By Mr. Timmins:

Q. May I ask one more question? Is not an expert on one side and an expert on the other side likely to arrive at the result hoped for by their respective groups a great deal faster than if there were an expert on one side and a non-expert on the other side?

Hon. Mr. Mitchell: The trouble is that you have too many experts and not enough common sense.

The Witness: I just want to make a correction—I still think it is a guess—but Secretary Buckley states that I was wrong in my figures and that 150,000 of our membership would come under this particular piece of legislation.

Mr. Homuth: 150,000 would come under it?

The Vice-Chairman: Instead of 100,000.

By Mr. Johnston:

Q. I think, in general, you agree that this legislation should become law?—A. Yes.

Q. Would it be your view then that this legislation as it stands, although it may have some things which should be modified, should be passed by the committee and become law during this next session of parliament? Then any provinces which have not got provincial labour legislation which is in agreement with the union opinion generally, the union should take up their problem with the governments of the provinces and have those provinces so change their labour legislation that it would conform with this legislation?—A. They have been trying to do that, but they have not had great success.

Q. My point is this; that rather than have different labour organizations endeavouring to change this legislation, they should make their concerted effort on the provincial governments with a view to having those governments modify their legislation. After all, this is more or less enabling legislation under which the provinces could come?—A. Some provinces have better legislation than this, in my judgment. We would not object to the lower ones being brought up to this.

Q. I am not suggesting that the unions endeavour to lower the labour standard of the provinces but more that they should make their bargaining more effective with the provinces where the provinces have ineffective legislation; that is where the fight should be rather than with this legislation. Is that your view?—A. We fight any place we want to get some amendment.

Q. I think I have not made myself clear. I thought your general conception of this bill was favourable?—A. It is favourable. We say it is a good start.

Q. There are some provinces which are very backward?—A. Yes. We would bring those provinces up equal to this.

Q. Those provinces which are not up to the same level, you would bring them up to at least the minimum standards as outlined in this bill?—A. That is right.

Q. What is your view in regard to amending the B.N.A. Act to make this legislation more effective? Do you think it is necessary?—A. We should like to have it, definitely. It is the policy of the Trades and Labour Congress of Canada that there is a need for uniform labour and social legislation. It is the only way we are ever going to get any place if we are going to become a unified country.

Q. Then, your purpose in having an amendment to the B.N.A. Act would be for the purpose of making this Act a national code?—A. That is right.

Q. Would you be in favour of excluding any province, say Quebec?—A. Excluding any province?

Q. Yes. Would you be desirous if you were going to make an amendment to the B.N.A. Act to make this a national code, of having Quebec along with the other provinces brought under the bill?—A. Definitely, if we had a national code. In fact, we go farther than that. I do not know that we are entirely enamoured with the idea that we should have a British North America Act. We regard it as horse and buggy legislation which does not fit in with the modern day needs and requirements.

By Mr. MacInnis:

Q. Mr. Bengough, there is a point which Mr. Johnston made which I think should be clarified. He referred to this as enabling legislation under which the provinces could come as they do under the Old Age Pension Act. This is not, in your opinion, enabling legislation?—A. No.

Mr. Johnston: I said, in effect it is.

Mr. MacInnis: It is not, in effect. It is a special bill covering a category of work which comes under the dominion jurisdiction. In my opinion, it is nothing else.

Hon. Mr. Mitchell: It is a good lead which the provinces that have no legislation could follow.

Mr. MacInnis: The provinces could follow the principles in it if they desired. Have you any comment to make on the time it takes, under this legislation, before an organization could even take a strike vote? I figured it out as approximately three months, I think. Have you any comment to make on that?

The WITNESS: I do not think we have any general objection to that. So far as the question of strike votes is concerned, under the old and the new Act, they are often very embarrassing anyway. They had to be taken before you could start.

By Mr. MacInnis:

Q. Before you could start proceedings at all?—A. It might in some places be an undue length of time. On the other hand, if the organization was not strong enough to stand 70 days or so of conciliation, then it would not be very strong in case of a prolonged strike. It could be argued both ways. The time really is a little on the long side and we should like it a little shorter. In the event of having to take the least of the two evils, we would take it as it stands.

Q. You would say that despatch in dealing with labour disputes is a good principle?—A. Definitely, if the time is shortened.

Q. Let me ask you one more question. You mentioned that some of the provinces had legislation better than this and some had poorer legislation. Would you care to specify as to which provinces have better legislation?—A. Well, the province of Saskatchewan has better legislation.

By Mr. Johnston:

Q. With reference to what I referred to a while ago, on page 25 of the bill in the margin it reads, "where uniform provincial legislation". Subsection (1) of section 62 reads,

> Where legislation enacted by the legislature of a province and part 1 of this Act are substantially uniform, the Minister of Labour may, on behalf of the government of Canada with the approval of the Governor in Council, enter into an agreement with the government of the province to provide for the administration by officers and employees of Canada of the provincial legislation.

There, it states that if the provinces have labour legislation which is similar, they can come under that. If the legislation were not somewhat similar it would have to be modified to come under this Bill. It was that I meant when I said it is somewhat like enabling legislation.

Repeating what I said, if the provinces have not got provincial labour laws which are similar in character to this bill, pressure should be applied upon those backward provinces to bring about provincial legislation which would be similar to this and thereby qualify under this bill. That is what I had in mind.—A. I might state that the old Industrial Disputes Investigation Act was, at one time, thrown out as being ultra vires. The dominion could not operate it in the provinces. This decision was rendered because of a case in this province. At that time, the Trades and Labour Congress of Canada approached all the provincial governments to get them to pass enabling legislation so the dominion government could operate in the respective provinces the provisions of the Industrial Disputes Investigation Act. We thought it had some merit at that time and it was generally adopted.

The VICE-CHAIRMAN: Gentlemen, are there any further questions? If there are not, we can excuse the witness.

By Mr. Adamson:

Q. I have a question which I should like to ask Mr. Bengough. Under P.C. 1003. I understand that the members of crafts working in a large plant were excluded from the bargaining agency. I noticed that the T.C.L. has made quite a point of this under section (*b*) of section 4 of their brief. They said:—

> There should be provision, as in P.C. 1003, to exclude the members of a craft whose craft union has been certified under this section from voting in collective bargaining elections for the craft or industry as a whole.

While this does not apply particularly to this bill, nevertheless it is a question that I think is of some interest to the committee. I understand that there are a number of very large industries involved. For instance, the Steel Company employs carpenters, bricklayers, mechanics, who I understand are members of crafts. Under this bill they would be allowed to participate in the formation of a collective bargaining agency despite the fact they were members of a craft, not members of the union that was the shop union which would have jurisdiction and which had been selected as the bargaining agency for the industry as a whole and that plant as a whole. While I realize this does not bring in the question of jurisdictional strikes and discussions would you care to comment on that?—A. I can only say that the Trades and Labour Congress of Canada has in affiliation many industrial organizations, as they are known. We are particularly interested in that angle if it was going to do any harm, but the fact remains that there is no place where we see that it will. One can visualize, of course, the odd incident where a question would arise to the detriment of the industrial organization. There is no question that there is a need for the recognition of craft organizations. You have mentioned carpenters. Those people are not tied down to any one particular job. Oftimes they moved around and are far better protected by an organization covering their craft. On the railroad end of it we have a number of organizations. We have not one organization but a number of them. It has worked very effectively. We have not had to get to the place where we have to take the greatest number and have a vote and say, "Now we are going to take over and have one organization." That has not been done. It is quite possible for the craft organizations and the organizations built on industrial lines to get along quite well together. All that provision does is to give protection where it is needed to craft organizations that are already established.

Q. You have no objection to that clause in this bill?—A. We want it. We want it in there.

By Mr. Johnston:

Q. Mr. Bengough, would you be desirous of having all labour legislation and all labour relations centralized in Ottawa?—A. Definitely.

Q. On all labour matters?—A. On all labour and social legislation.

The VICE-CHAIRMAN: Are there any further questions?

By Mr. Homuth:

Q. From the wording it would seem to me that a craft union, for instance, a craft union within the Steel Company of Canada, could go on strike and close up the whole plant or on the other hand the general shop union could go on strike and put the craft union men out of work. In the brief of the Canadian Congress of Labour they suggest that a craft union should not have a vote on the general principle of strike or matters pertaining to the general union in the factory. What is your opinion about that?

Hon. Mr. MITCHELL: The craft would be an entity.

The VICE-CHAIRMAN: I think in fairness I should say that what they said was that they should not have two votes, one for the craft and one in the industrial union. That is what they said in effect.

Hon. Mr. MITCHELL: The craft union would be an entity.

The VICE-CHAIRMAN: Is this not the question, that section 8, which is the section that is being dealt with, is likely to lead to jurisdictional strikes? Is that not the question?

Mr. HOMUTH: Yes.

The VICE-CHAIRMAN: What is your opinion on that?

Mr. HOMUTH: That is the danger that I can see.

The WITNESS: I do not think it would tend that way. The only place where you have had it in effect, as I stated, for the last ten years is in British Columbia where they have had identical legislation. It has not worked out that way there. I mean after all that has been a testing ground for that particular piece of legislation. It has worked out well.

By Mr. Sinclair:

Q. There have been jurisdictional strikes among the labour unions in British Columbia under their legislation. In the shipyards there were jurisdictional strikes?—A. Yes, but you would have them without this legislation or anything else. You do not need that to get them.

Q. The point Mr. Homuth is making is would not such a variety of bargaining agents be likely to lead to more jurisdictional strikes where a single bargaining agent would not?—A. I do not think that particular legislation had any bearing on the strikes they had in the shipyards. There you had a number of organizations, it is true, but I do not think it arose out of that. In any case, as far as the position of the craft organizations, and I will go further and say the position of the Trades and Labour Congress of Canada, if any bill did not contain that we certainly would not be for it.

The VICE-CHAIRMAN: Any further questions? If not we will excuse Mr. Bengough. Our next witnesses are Mr. Burford and Mr. Smith who will speak for the Canadian Federation of Labour. They have not any brief. It will be an oral presentation. They tell me it will not be very long.

W. T. Burford, Secretary-Treasurer, Canadian Federation of Labour, called:

The WITNESS: Mr. Chairman and gentlemen:—

By Mr. Homuth:

Q. Where is Mr. Burford from?—A. From Ottawa at the present time.

Mr. TIMMINS: May we ask him to explain the position of the Canadian Federation of Labour in the labour field?

The VICE-CHAIRMAN: That is what I would like him to explain, their general position in the labour field.

The WITNESS: We appreciate the invitation of the committee to attend this morning. It is not that we are so deeply concerned as some other organizations appear to be in the details of this legislation, but we wish to put forward our point of view which is that, we believe, of the free workers of Canada.

There are approximately 300,000 workers in Canada in organizations which are not affiliated with either of the two labour trusts, the better known organizations. These independent unions are to a very large extent organized and banded together in the Canadian Federation of Labour which has existed since 1902. At the present time we have not a majority of that 300,000 but we are rapidly reaching that point. In the meantime we feel that in what we have to say to this committee we speak for all of them. We speak for all those combined together in labour organizations who do not wish to be dominated and dictated to by outsiders in any shape or form, whether it be a foreign labour organization or political groups or employers.

We hope to make our submission very brief. We have no memorandum to submit for the reason that we did not receive a copy of the bill until Saturday, and you know that the temperature since then has been around 95.

On the general question of this legislation while we recognize that the governement and parliament are doing the best they can to implement the desires of what they conceive to be the bulk of the organized workers, and while I think this present legislation represents a commendable effort in that direction, without stressing too much what we conceive to be its inequalities and anomalies we are not enamored of this type of legislation at all which we regard as an effort to impose police direction upon labour organizations.

Many years ago the desire of the workers for legislation was expressed in the slogan of the right to recognition, the right to organize, protection for workers in banding together in the manner of their own choice. By a change in the Criminal Code by way of amendment passed in 1939 the workers were accorded that full protection which they had sought for many years. With that adequate change, that adequate measure of protection in the Criminal Code, our organization could never see the need for the adoption of what is after all a carbon copy of the Wagner Act of the United States. In the United States circumstances imposed this legislation upon labour organizations, circumstances which probably justified this type of legislation. However, in the United States, if I may disgress for a moment, it was not the original intention to adopt anything resembling the Wagner Act when the New Deal started in 1933, 1934 and 1935. It was only because the National Industrial Recovery Act was declared invalid by the Supreme Court of the United States that as a second choice the authorities there introduced the Wagner Act, the National Labour Relations Act. It was not their first desire.

It was not their first desire because no doubt they had looked around the world and they had seen the practice in other countries. Nowhere else was there any thing resembling the Wagner Act. In practice in the civilized countries of the world the method of facilitating the organization of the workers and protecting their conditions voluntarily agreed upon by a preponderant proportion of the workers in any industry or region was the general practice, that is to say, a system of codes. The practice of the system of codes, which was after all the essence of the National Industrial Recovery Act of the United States, the blue eagle, was that where in any industry or in any occupational group conditions had been reached by voluntary agreement between a large proportion of the workers and the important employers those conditions should be made general in that industry or occupational group.

The extent to which that practice prevails, and has prevailed for many years, was mentioned by Miss Margaret MacIntosh of the Department of Labour in 1943 at a meeting of the Canadian Political Science Association. If I may I will read this short excerpt from Miss Margaret MacIntosh's remarks. Referring to the Quebec Collective Agreements Act she said:—

> Although it stands alone in Canada the Quebec Act is similar to laws in New Zealand, in several Australian states, in South Africa, France, Bulgaria, Czechoslovakia, Denmark, Finland, Greece, Ireland, Luxembourg, the Netherlands, Norway, Poland, Portugal, Roumania, Spain, Sweden, and Russia, the Argentine, Bolivia, Brazil, Chile, Ecuador and Venezuela, as well as in Mexico and Cuba. Before 1933 such legislation was in effect also in Germany and Austria. Since the war the same principle has been adopted in Britain in the Conditions of Employment and National Arbitration Order, 1940, and in the Commonwealth of Australia under the National Security Act. So Quebec is in good company in respect to this statute.

That excerpt shows the general trend of legislation to help a labour organization to help itself, and to protect it when it has helped itself. It was only because of the peculiarity of the constitutional situation of the United States that we ever got the Wagner Act and it was ever copied in his country

We feel that there is a tendency to regard the machinery whereby labour can help itself, whereby standards may be preserved, as more important than the standards themselves when they are achieved. For that reason, although we do not disparage the government's attempt to introduce this legislation, we feel it would have done better to have taken the line of Quebec province or of the other countries which have such collective labour extension acts rather than to have adopted this system of policing labour regulations by means of a board.

One of the main objections we have to this type of legislation, in differentiating it from the codes of fair practice system, is that compulsory collective bargaining inevitably results in compulsory organization, not only compulsory organization but compulsory organization of a certain type. It would not be so bad if compulsory organization affected all organizations equally, those which have some regard for the rights of minorities and those which come in and introduce practices which are foreign to the traditional free labour movement, but wherever you have compulsory collective bargaining which, of course, is cheered on by the average worker as being something to keep the boss in line, you find that it results in the workers being kept in line. The average worker is compelled to join an organization to which he may have no desire to belong. We have known instance after instance in our experience, and in a moment I shall ask you to allow Mr. Smith to tell you about some of the cases where a minority of the workers have been organized in a plant, and under the machinery provided by P.C. 1003 the workers have been asked to take a vote, and an organization which could not command a majority of the membership nevertheless has secured a majority vote on the spur of the moment, and by dint of intensive propaganda the result has been that those workers have been tied for a period to an organization to which they still refuse to belong and which even the original membership may have repudiated. Yet the bargaining agency remains, and it has always been very hard to remove a bargaining agency once established in that way.

The plant of the Steel Company of Canada in Hamilton is one instance of compelling workers to make a choice whether they wish to join or not to join, with a government official at their elbow. That is objectionable to those of us who believe that democracy should prevail in industry, and that you do not have to belong to anything; you do not have to belong to a political party or a union if you want to make a living.

Then again the insistence that every person in a bargaining unit shall have a vote is somewhat contrary to the principle of political elections. I heard a previous speaker this morning refer to the similarity between these plant elections and political elections. The similarity is largely discounted when one recalls that one-third of the population is disenfranchised in a political election, the juvenile third of the population, but in a plant election the man who was taken on yesterday, the man who may be fired tomorrow when the job slackens off, has the same right to vote as the man who has been there for half his lieftime. It might be a good thing, if this type of legislation is to be followed, as I presume it will be, if some regard were paid to seniority in plant elections, if, for example, those workers who had not been there in service for the average length of service of the employees of the plant, were not accorded a vote. Then there would be no question of the veteran employee being outvoted by the raw beginner, by the apprentice, or if instead of that you followed the Quebec practice in respect of having 60 per cent to constitute a voting plurality.

I want to refer to one of two points in the bill which I will say again is as good possibly as can be devised to give effect to this particular type of protection for industry and labour. There are one or two points which I think need rectification. There is a definition on page 2 of strike. A strike is defined as including a cessation of work or refusal to work or to continue to work, by employees in combination or in concert or in accordance with a common understanding, for the purpose of compelling their employer to agree to terms or conditions of employment or to aid other employees in compelling their employer to agree to terms or conditions of employment. There you have the secondary boycott which has just now been outlawed in the United States. I think it is bad enough that we should be adopting their castoff clothes in this country at this juncture without adopting their worst feature, the secondary boycott. That means that workers for employer A who are at peace with their employer can go out on strike and assist workers for employer B who are having a dispute. It means that the employees of an employer can engage in a sympathetic strike without being victimized and without their own employer being liable—

Hon. Mr. MITCHELL: If I may interrupt, you know that is not true.

The VICE-CHAIRMAN: I did not like to stop you but I do not quite follow you on it.

The WITNESS: I read that in the Act.

Hon. Mr. MITCHELL: You are reading something that is not there.

Mr. HOMUTH: Let us have a little less mumbling up there. Let us all hear what is going on.

Hon. Mr. MITCHELL: I said it is not true.

Mr. HOMUTH: Now, just a moment; the minister sits there and says it is not true. The minister is only a common member of this committee and we might have said that something which Pat Conroy said was not true or we might have said something else. We are the ones who are going to judge the truth or untruth of these things. If people come here and present a brief, the understanding was there would be no interruptions when they were giving the brief. The minister ought to abide by that, too.

The WITNESS: There is only one other point which I should like to mention and that deals with the composition of the board. A board of this nature which will be composed entirely of representatives of labour organizations and employers, ought to be dedicated to serving the public interest. There has been some suspicion, at times, they have been tempted to serve sectional interests. In order to avoid any such suspicion and in order that there shall not be a chance of it, we do suggest, Mr. Chairman, that any board administering labour relations should be free from any sectional interest. It should have judicial qualities. It should be reduced in numbers. Appeals from that board should go to the courts. We do not see that there is any need to keep our lawyers from advocating a case before the board. We believe lawyers should have the same rights as other citizens and other corporations.

As Mr. Homuth mentioned it is possible for a person to become trained or even for a disbarred lawyer to appear before the board if you put in that artificial restriction. We feel, further, that the board should have some judicial quality. The board should not represent a number of sectional interests. It is acting in the public interest and in the public interest alone.

Now sir, as I have said, we have Mr. Ernest Smith here from Toronto. He is a member of our board and has had practical experience with the application of this legislation in its various forms. He would like to cite certain instances from his experience which bear out our contention that this law needs to be amended so that the present anomalies and inequities can be erased.

The VICE-CHAIRMAN: Just one minute; are there any questions the members of the committee desire to ask Mr. Burford before he sits down?

Mr. HOMUTH: Due to the fact both these persons are presenting one brief, might it not be easier to wait until we hear the second man deal with specific instances before we ask questions?

The VICE-CHAIRMAN: If there are any questions, let us have them now. I think we will get farther that way.

Mr. Ross: I think Mr. Burford is in Ottawa and we should have a copy of that before we ask Mr. Burford any questions. We will have it typewritten.

Mr. MacInnis: We can recall him, but I should like to ask some questions now.

Mr. Lockhart: Are you ruling that we cannot call Mr. Burford back in the event something develops?

The Vice-Chairman: I did not rule any such thing.

Mr. Lockhart: We can call him back, even though we cannot question him now?

The Vice-Chairman: Exactly.

By Mr. MacInnis:

Q. Mr. Burford, can you tell the committee with any accuracy how many employees you represent, how many organized workers you represent?—A. Approximately 52,000 at the present time.

Q. What organizations briefly, are there? What local organizations are in the Canadian Federation of Labour?—A. I have not a complete list, but I have here a list of those which were recently organized and I can read the names of the unions or the names of the plants. I think the names of the plants are more intelligible because there is no confusion that way. This is the list:—

> Atlas Steels Limited, Welland; Penmans Limited, Paris; Ruddy Freeborn Company Limited, Brantford; Acme Farmers Dairy Limited, Toronto; The Joseph Stokes Rubber Company Limited, Welland: Keep-rite Refrigeration Limited, Brantford; Galt Metal Industries Limited, Galt; Anaconda American Brass Limited, New Toronto; Brantford Refrigerator Limited, Brantford; Hamilton Bridge Company Limited, Hamilton; Roselawn Farms Dairy, Toronto; Sarnia Bridge Company Limited, Sarnia; Amalgamated Electric Corporation Limited, Toronto; Wilson Motor Bodies Limited, Long Branch; National Cash Register Company of Canada Limited, Toronto; Capital Carbon & Ribbon Company Limited, Ottawa; Little Long Lac Gold Mines Limited, Geraldton; Bidgood Mines Limited, Kirkland Lake; Eastern Steel Products Limited, Preston; British American Oil Company Limited, Long Branch; National Steel Car Corporation Limited, Hamilton, partial organization; Toburn Mines Limited, Kirkland Lake; Canadian Industrial Alcohol Company Limited, Corbyville; and Melchers Distilleries Limited, Berthierville.

These are the recent additions as put out in our bulletin. A complete roster is not available here. We do not, as a rule, publish a complete roster for reasons which I do not think it is necessary to give.

Q. I just asked in order that we might know what organizations are included. In referring to this legislation, you said that it was commendable legislation. Then you attacked it as being police control of labour. How do you harmonize police control of labour with commendable legislation?—A. If you are going into that type of legislation, Mr. MacInnis, we say this is about as good as you can get, subject to certain minor amendments in detail.

Q. It would not be commendable if you are opposed to the principle?—A. I should like to repeat what a previous witness said here; it is something like the curate's egg, it is good in part.

The Vice-Chairman: Are there any further questions? From your general remarks I gathered the opinion, perhaps mistakenly, that of all the labour codes in the Dominion of Canada, the provincial labour codes, you preferred the Quebec labour code as having the best standard for the labouring people of the country generally. Is that a fair statement of what you said?

The WITNESS: Not exactly, sir.

By the Vice-Chairman:

Q. Just correct it then, will you please?—A. As Miss Margaret McIntosh stated in the articles to which I referred, the Quebec Collective Agreements Act has materially improved conditions in that province. It has enabled the unions to get local codes established. It has had a marked effect upon conditions.

I should not like to say that the general trend of labour relations in Quebec, that the general standard is as good as it ought to be. I would not want to endorse Quebec and except the other provinces, but I say they have adopted the right model. We would like to see that type of legislation become general as it has in most of the rest of the world.

The VICE-CHAIRMAN: There being no more questions, we will hear from Mr. Smith.

Ernest Smith, Toronto, Special Representative, the Canadian Federation of Labour, called:

The WITNESS: Mr. Chairman and members of the committee: I am very happy to have this invitation to be with you this morning. Apparently the Canadian Federation of Labour has left it to me to fight the various board cases which have come before the national board, the provincial board and the Regina board for the past three years. Since the inception of the Act, that has been my function; merely winning cases for our organization.

Now, we have some 69 plants in the province of Ontario and in the last fifteen votes we have not lost one vote. This Act is very commendable. I have nothing much to say about it outside of a few clauses here which may not really amount to very much.

I would cite, for the benefit of those who drew the Act, Mr. Chairman, the fact that we are stating here in clause 2, subsection (*b*),

> Bargaining agent means a trade union that acts on behalf of employees.

Now, I think that is the interpretation of the meaning of this Act. I should like to suggest, Mr. Chairman, that that be changed to read, "A labour organization." A trade union, to my mind, has always been individuals engaged in a skillful occupation. In the United States, the Act says, "A labour union," and not "a trade union".

I have a reason for saying that. If we go further over, we still see a trade union mentioned in clause 3.

> Every employee has the right to be a member of a trade union and to participate in the activities thereof.

I should like to suggest, Mr. Chairman, that the committee study the advisability of making that read, "A labour organization".

If you go over to clause 9, I am mostly concerned with this clause, you will see it relates to the certification of bargaining agents. This has been a source of worry for three years now, the certification of bargaining agents. It is my contention that the Act, itself, is not to blame; it is the regulations which are made by the boards thmeselves that cause the trouble. The boards are allowed a certain latitude. There are no limitations, as long as the board does not forget it has to make certain rules and regulations for the certification of bargaining agents. It is very irritating to me at times. I do not think any board should certify a bargaining agent, whether it be a trade union or anything else, without taking a vote in that plant. On every occasion there should be a vote in the plant to determine the wishes of the employees.

I am opposed to coercion and intimidation, myself, as a director of this organization. Cards are easy to obtain by various methods. It is quite easy to show a board 51 per cent of the membership without coercion or intimidation showing. For instance, in the case of the Roselawn Dairy. The men were signing those application cards because they were told, "If you do not pay $2 now, you will pay $10 when we are certified."

Now, in the case of each and every vote I won those who were before the board had a majority of the application cards. I took those votes because when a worker is behind a curtain casting his vote there is no intimidation behind that curtain. When you say you can certify a bargaining agent because he can put down 60 or 75 per cent of the cards it is unfair because later you have to face demands for a check-off and a closed shop which forces individuals to join who do not then belong to the organization. We would do away with a lot of trouble entirely if there was a vote taken in every plant where there was a petition for certification.

If you turn to clause 11, you find the following:—

> Where in the opinion of the board a bargaining agent no longer represents a majority of employees in the unit for which it was certified, the board may revoke such certification—

I am opposed to any such latitude given to this board. When an organization has been certified it is certified until displaced, in my opinion. It is not fair to any organization which has obtained certification to leave such latitude in the hands of a board because some individual may come along and declare they are only a minority. I am in favour of including in that clause a provision whereby the organization may come along after one year and show 40 per cent of the application cards in that very plant, then the board should determine whether it will take a vote to see if the new agency or the old agency shall be the bargaining agent.

I remember in the Lake Shore case on October 11, 1945, I had a man stand up in front of me and tell me he did not have a member in that plant. He was a bargaining agent so I must show 51 per cent to displace him before the Ontario board. This is supposed to provide for the certification of majorities, not minorities. When I produced 42 per cent of the application cards on appeal to the national board, I was turned down yet this man distinctly stated he had not one member in the plant. This perpetuates minorities. There must be some method devised whereby, when you come to the end of the year, you can prevent the compelling of workers to belong to some union. Some interested organization may appear before the board with less than 50 per cent and ask for an opportunity to have a vote in that plant. There is no provision for that here but there is in the regulations.

In clause 24 it states,

> A trade union that is not entitled to bargain collectively under this Act on behalf of a unit of employees shall not declare or authorize a strike of employees in that unit.

Now, we are entering very dangerous ground here, very dangerous ground. The various provincial boards have always given the following interpretation, that where an organization has held the collective bargaining document for a period of one year it shall be recognized as the certified bargaining agent so far as the board is concerned. This has been stated by Mr. Finkleman, Mr. Draper and Judge Macdonnell of the Ontario board. This Act, if you turn to the last page, clause 72, subsection (3) does not have to bear out that contention.

> Where a person was certified, before the commencement of this Act, under the order of His Excellency the Governor General in Council mentioned in subsection (1) of this section as a bargaining agent pursuant to an application by a trade union (including therein an employees organization as defined in the said order) the said trade union shall be deemed to have been certified as a bargaining agent for the purposes of part 1 of this Act—

What of those organizations which have had collective bargaining agreements? I recall back in 1919, when I was with Sydney Hillman, the chairman of the board of directors, we were not certified to hold a collective document in a number of plants in the city of Toronto and Montreal. They are not certified either. I think that Act is not specific enough. Any organization which has held the collective document for one year should be recognized as the sole bargaining agent until displaced by another organization; that is my contention on that point. I want to say a word about this contentious problem of lawyers that we heard so much about this morning. I have had a lot to do with those gentlemen before boards and I am not averse to any legal counsel coming before any conciliation board. I have appeared before several. In fact, I rather enjoy the experience. They have taught me an awful lot. As has been said already a man may be disbarred from practising law. We have had one quite recently in this country. He may become connected with some trade union as a director or anything else, and he therefore has the privilege to appear before conciliation boards to represent his union, and he is fully versed in the law. There are too many amateurs in trade unions who do not understand the functions of conciliation boards and who have cases before them. I am certainly not in favour of the exclusion of lawyers from appearing before conciliation boards. I have nothing to fear. They have fought me and I have fought them. As I say, I enjoy the experience.

I want to digress for a moment and take you to the Trades and Labour Congress brief and the Congress of Labour brief relative to the inclusion in this Act of some compulsory feature of union security and maintenance of membership as they have in the Saskatchewan Act. I am not in accord with it. I am rather in accord with what Clarence Gillis said in 1945 that any organization that cannot hold its people by reason of its service to them has no right in effect to compel membership in the union. If you have the voluntary checkoff that is all that is necessary.

In Atlas Steel when I took over two years ago we had 458 members. To-day with the voluntary checkoff I have got 1,275 members. I have delivered a service. In the National Cash Register Company we have 785 employees. I have 695 on the voluntary checkoff. I have delivered a service. I do not need to compel. In these organizations I think I have delivered that service by agreement, negotiation, and have got them substantial increases in wages, and they still stay with me and will never leave me. I say there is no substitute for freedom. I am strongly against union security by means of compulsion on the workers.

I recall some nine months ago writing the Minister of Labour, God bless him. I have known him since he was 16 when he played the bugle and I beat a drum.

I wrote him relative to subversive elements in the Stokes Rubber Industry which is a large industry. On the 23rd of May this year I had a bit of a fight with the United Electrical Workers. I am not proud of those organizations. I believe any organization that is led by Communists should not be given the sole collective bargaining rights in any industry. It is a danger to our way of life. One good Communist can handle 1,000 inexperienced workers. I say that this committee should think well in the drafting of this bill about this business of certifying key industries and other essential plants in our country to individuals who do not love our way of life, and are subversive. We do not know where their political funds come from. I am fighting that daily as a Canadian and I intend to fight it.

That is about all I have to say. I want to say again I am very thankful and happy to have had the opportunity to be here. I want to thank you, Mr. Chairman, for having that privilege. As I said before the Federation of Labour is a collection of autonomous independent organizations in Canada. The aggregate figure is 315,000. We have 52,780, and we are growing fast every day. They keep their dues in Canada. Most of them are registered under the Trade Union Act. They have a legal entity and are legally suable. They have accepted responsibility with privilege. I for one am in accord with that. Any organization should be willing to accept its responsibilities with the privileges of this country. We have done it and have nothing to hide. Every one of our unions but two have done that, and all our unions but four have collective agreements and are certified under various boards in this country. From our coal miners to our gold miners, they have nothing to hide. This country will be much cleaner when we all of us accept responsibility with privilege. Mark it well any individual who does not is not responsible and should not be connected with any trade union movement. Thank you very much.

The VICE-CHAIRMAN: Gentlemen, we have a few minutes left. Are there any questions anyone would like to ask Mr. Smith?

By Mr. MacInnis:

Q. When was the Canadian Federation of Labour organized? A.—The Canadian Federation of Labour was first formed in 1902 in Berlin, now Kitchener, Ontario. It was disbanded later on around 1926 and was merged with the All-Canada Congress of Labour of which Mr. Mosher was the president. In 1936, around there, there was a cleavage and the name of the Canadian Federation was revived. The Canadian Federation of Labour has not to this day placed figures in the *Labour Gazette*. It leaves its unions free to do so if they desire, but I will say here, as I have said before, that they have no value because the figures in there are not correct. Some people go on representation and not membership. When they decide as to one or the other we will do the same.

Q. I have the 35th annual report of labour organizations in Canada for the calendar year 1945. It refers to the Canadian Federation of Labour here and gives the number of branches as four and the membership as 193.

The VICE-CHAIRMAN: Four branches and 193 members?

Mr. MACINNIS: Four branches and 193 members. Those are the figures in this government publication issued by the Minister of Labour and by the Deputy Minister, Arthur Macnamara.

The WITNESS: Dr. Allan Peebles wrote for those figures. I sent out telegrams to all organizations not to send in their membership records.

By Mr. MacInnis:

Q. You will not co-operate with the Department of Labour?—A. Under the existing conditions I say that these figures have no value. When they have value we will be glad to co-operate and put them in, but we do co-operate with the Department of Labour. I think I do.

Hon. Mr. MITCHELL: I think you should make it clear that the Department of Labour has no ulterior interest in the figures supplied by these respective organizations. I can speak for my own organization, the Trades and Labour Congress of Canada. I am a member of one of its affiliated organizations. I think the figures they supply are correct figures. I think that might also be said of the railroad brotherhoods and also of the Canadian Congress of Labour. I think that should be said because I think it is true by the very nature of things that unless we get the cooperation of these organizations we cannot improve their situation in this dominion. If I were leading an organization of 300,000 people I would certainly forward figures to the Department of Labour so they could be incoropräted in the *Labour Gazette.*

The WITNESS: Mr. Chairman, I will have our organization instructed to send their membership records to the Department of Labour.

The VICE-CHAIRMAN: Are there any further questions?

By The Vice-Chairman:

Q. I have one question. You refer to section 2 (*b*) where it says that bargaining agent means a trade union. You object to the words "trade union" and you suggested that the words "labour organization" should be used. Under labour organization would that not include company unions?—A. No, it definitely would not. In my opinion I think we brought the industrial trade union into Canada, the Amalgamated Clothing Workers of America.

Q. Let us get down to my question.—A. A Company union is one where we assume that it is financially or morally dominated by the boss, but I would include a third reason, any organization where the employer will not permit an outside party to come in and negotiate. That puts some people in this room in a very uncomfortable position. Take some of the railroad unions. I would add that third reason and I would say that any organization where the employer in any way can dictate or dominate that union financially, morally or otherwise is a company union and should be disestablished. I am talking about a labour union. An industrial union organization is a labour union. A craft union, in my opinion, is a trade union, men with a trade. That is a craft union.

The VICE-CHAIRMAN: Are there any other questions?

Hon. Mr. MITCHELL: Would you call the United Mine Workers of America a trade union or a labour organization? I think the term trade union is traditional. It is a British term. It sprang up in Europe. We always used to speak of the German trade union movement, the British trade union movement, the French trade union movement, the American trade union movement. I think it is generally understood how it applies.

Mr. MACINNIS: As far as the definition here is concerned I imagine it is, but in an industrial organization you have not really got a trade union; you have got a labour union. However, I do not think it is important.

The VICE-CHAIRMAN: Gentlemen, we will adjourn until 4 o'clock this afternoon.

Mr. ADAMSON: Whom will we have here?

The VICE-CHAIRMAN: The Canadian Chamber of Commerce and the Canadian Manufacturers Association.

The committee adjourned at 12.30 p.m. to resume at 4 o'clock p.m.

AFTERNOON SESSION

The committee resumed at 4 o'clock.

The CHAIRMAN: Gentlemen, I will call the meeting to order. The first presentation is from the Canadian Chamber of Commerce. Mr. Sheridan will make the presentation. Copies of the brief are being passed out now.

Mr. W. J. Sheridan, representative from the Canadian Chamber of Commerce, called:

The WITNESS: Mr. Chairman and gentlemen, on January 15, 1947, the executive committee of The Canadian Chamber of Commerce submitted to the Minister of Labour a brief on the "Draft bill re The Industrial Relations and Disputes Investigation Act, 1947". The executive committee now welcomes the opportunity to bring this brief up-to-date, in the light of bill 338 which has now been developed from the original "draft bill".

This present brief deletes certain representations and suggestions which were made in our earlier brief, in cases where revisions found in bill 338 now satisfactorily cover such points.

The recommendations we now make refer chiefly to matters of a broad fundamental character and revolve mainly around the chamber's general policy decisions concerning labour legislation.

The executive committee of The Canadian Chamber of Commerce recognizes the many real and involved problems presenting themselves with the return to the provinces of such jurisdiction over labour relations as was assumed by the dominion during war-time and immediate post-war emergency. It recognizes also the desirability of as great a measure of uniformity as possible in dominion and provincial legislation and approves the efforts that are being made in this direction. At the same time, it emphasizes that the provisions of an order in Council adopted as an emergency measure during a world war are not necessarily suitable for permanent adoption in a peacetime statute. We still detect obvious signs of wartime thinking in bill 338 and to this extent consider that it includes certain undesirable features.

We have divided our further comments into two main heads: firstly, the continuing lack of balance in bill 338 as between the rights and responsibilities of labour, on the one hand, and of management, on the other; secondly, the absence of safeguards in the exercise of the very broad powers conferred by the bill on the minister charged with its administration and on the proposed Canada labour relations board.

RIGHTS AND RESPONSIBILITIES OF LABOUR AND MANAGEMENT

Like the Wartime Labour Relations Regulations, the bill appears to proceed on the assumption that trade unions require special privileges in their dealings with employers. Whatever may have been the position in the past, their status and the important part they play in a modern economy have been recognized by employers and by law. The question now is whether the balance has not swung in the other direction and whether the law should not recognize that trade unions and employees have responsibilities commensurate with their power and privileges. The executive committee believes that the bill still shows in several respects a lack of that balance between the rights and responsibilities of employees and employers which is essential to the orderly conduct of labour relations.

As examples of the sort of thing we have in mind, we refer you to specific comment below on various sections of the bill.

Section 3, Freedom of Association

Section 3 recognizes formally the right of employees to belong to a trade union and of employers to belong to an employers' organization. If it is necessary to include such a provision, and we have no objection whatever to it so far as it goes, we believe that the section should also recognize expressly the right of employees and employers to abstain from joining a trade union or employers' organization, respectively. The section would then express accurately what we understand by the principle of freedom of association.

Sections 4 to 6, Unfair Labour Practices

Sections 4 to 6, dealing with unfair labour practices, require amendment in a number of respects. For example, section 4 (3), among other things, prohibits "intimidation or coercion to compel an employee to become or refrain from becoming or to cease to be a member of a trade union" (Lines 19, 20, 21, 22). This is all well and good but the Act should also prohibit intimidation or coercion to prevent any employee or member of the public from entering an employer's premises where he has a lawful right to go, or from leaving such premises.

Also, we again strongly urge that sections on unfair labour practices, or some other relevant sections, should be amended to prohibit the secondary boycott, in which employees in a plant where there is no dispute refuse to handle materials from a plant in which there is a labour dispute.

Sections 14 (b), 15 (b), and 39, Right of Employer to Change Conditions of Employment

There is no justification for the inclusion of section 14 (*b*), which deals with terms and conditions of employment, where a collective agreement is not in force. There is likewise no justification for the inclusion of section 15 (*b*) with its prohibitions against employers after the expiry or termination of an agreement. So far as it affects employers where a collective agreement is not presently in force, there is also no justification for the sanction section 39. These prohibitions constitute an unwarranted interference with the necessary rights of an employer to manage his own business. Just as we condemn any unwarranted interference by an employer with the formation or administration of a trade union among his employees, so also do we condemn any unwarranted interference by employees with the proper functions of management.

Section 21 to 26, Strikes and lock-outs.

If provisions in the bill are necessary to facilitate the formation of trade unions and collective bargaining, then the right of the employees to strike, and hence to disrupt the orderly and peaceful settlement of differences in accordance with law, must be limited. If we interpret correctly sections 21 to 26, dealing with strikes and lock-outs:—

(1) the strikes prohibited are the strikes defined in section 2(p), in other words "for the purpose of compelling their employer to agree to terms or conditions of employment or to aid other employees in compelling their employer to agree to terms or conditions of employment," whereas strikes may be called for other purposes;

(2) in view of the words of section 2(p), "or of compelling another employer to agree to terms or conditions of employment of his employees," the so-called "sympathetic strike," in which employees in a plant, where there is no dispute, strike in support of employees in other plants, would be permissable in certain circumstances under sections 21 to 26.

So far as it can be done within the terms of the Act, we urge that the bill should be expanded to prohibit specifically:—

(1) strikes for purposes other than to compel an employer to agree to terms or conditions of employment; for example, strikes for political motives, for the purpose of securing recognition of one trade union over another.

(2) sympathetic strikes;

(3) any strike unless a majority of the employees concerned have expressed a desire to strike by a properly supervised secret ballot taken after the expiry of the "cooling off" period.

Responsibility of trade unions

The time has come for the law to recognize that trade unions should bear responsibilities commensurate with their rights. We suggest that the word "may" in section 52(2), line 1, be deleted and the word "shall" substituted, and that lines 9 and 10 under section 52(2)(b) be deleted, so that the section will now read:

> (2) The board shall direct any trade union or employers' organization which is a party to any application for certification, or is a party to an existing collective agreement, to file with the board,
>
> (*a*) a statutory declaration signed by its president or secretary stating the names and addresses of its officers, and
>
> (*b*) a copy of its constitution and by-laws; and the trade union or employers' organization shall comply with the direction within the time prescribed by the board.

Similarly, trade unions should be required to furnish annual financial statements to their members, as companies must do to their shareholders, and to maintain adequate records.

Powers of minister and proposed Canada Labour Relations Board

The broad and unrestrictive powers conferred by so many statutes upon individual ministers and upon administrative and quasi-judicial boards is rightly a matter of growing concern in Canada. If the tendency continues, it will inevitably undermine democratic processes of government and respect for law and order.

Sections 46 (1) and 56 (1), Powers of Minister

We draw particular attention to section 46(1), which provides that no prosecution for an offence shall be instituted except with the consent in writing of the minister, and to section 56(1), which provides in part that the minister of his own initiative, where he deems it expedient, "may do such things as seem calculated to maintain or secure industrial peace and to promote conditions favourable to settlement of disputes." Both these provisions are entirely too broad and we recommend that they be amended or omitted.

We are convinced that one of the essentials of industrial peace to-day is a whole-hearted observance of the orderly processes of law and we are satisfied that the principles of this bill will not be observed unless violations are punished and it is generally known that they will be punished. No honest employer, employee or trade union need fear the omission of section 46(1). The presence of this section weakens the effectiveness of the bill since prosecutions may be disallowed.

Taken at their face value, the concluding words of section 56(1) are broad enough to permit serious interference with the rights of an employer, employee or trade union, including the appointment of a controller and the taking over of a plant. If they are inserted with some particular object in mind, that object should be defined clearly; if not, they should be omitted. We suggest that, without them, the minister would still have all the powers necessary for the proper administration of the Act.

Sections 58 to 61, Canada Labour Relations Board

The executive committee of the Chamber also wishes to draw attention to certain inadequacies of sections 58 to 61, in so far as they relate to the constitution and functioning of the Canada labour relations board.

Chief objections to these sections revolve around the fact that the proposed board will be fulfilling the functions of a court of law without some of the safeguards to which a court of law is subject. We do not mean to imply by this that the proposed board should be bound by all the technical rules that govern an ordinary court; we do mean that restrictions on the exercise of the board's very broad powers are quite inadequate, as the bill is presently set out.

In connection with improvements which should be made to spell out the powers of the proposed board, we would suggest:—

(1) an adequate provision to prevent any member sitting in judgment on a dispute in which he has already been involved on one side or the other or in which he may have a personal interest.

(2) amendment of section 58(6) at least to the extent of limiting the evidence that may be required to relevant evidence.

(3) a provision requiring the proposed board to give interested parties an opportunity to be present while others are giving evidence or making representations and to hear them in rebuttal.

(4) a requirement that the sittings of the proposed board should be open to the public, except in special circumstances.

(5) the situations in which the proposed board may delegate authority under section 59 should be defined restrictively or the section should be deleted.

(6) all rules made by the board under authority of section 60 of the bill should be published and should not come into effect until so published.

(7) written reasons should be given by the proposed board for its decisions and it should be compulsory to publish such decisions and reasons for the information of the public. The same recommendation as to compulsory publication is made with respect to reports of the proposed conciliation officers and the conciliation boards.

(8) a provision for an appeal from the decisions of the proposed board to the Exchequer Court of Canada.

This bill would seem to permit decisions being taken in violation of the fundamental principles of justice. It is not sufficient to argue that the conditions governing the powers and operations of the proposed board are similar to those under which the Wartime Labour Relations Board operated. The Canadian citizen gave up many of his rights in the emergency of war, but has no desire to continue government by administrative and quasi-judicial boards. Experience with emergency wartime regulations surely demonstrated the need for additional safeguards when the days of peace returned. We do not wish to see Canada carrying over into a peace time statute any inadequate, emergency provisions of a wartime order in council.

Summary

In summation, we re-state the chief general principles for which we stand and which seem to be inadequately provided for in the present wordings of bill 338:—

(1) The right of persons to abstain from joining employee or employer organizations should be guaranteed;

(2) Mass picketing to prevent entry or leaving of a plant and the secondary boycott, should be prohibited;

(3) An employer's legal rights to change conditions of employment where a collective agreement is not in force should not be curtailed;

(4) The right to strike should be further regulated, for example, by prohibiting the sympathetic strike and by requiring a properly supervised and secret ballot after the expiry of a "cooling off" period;

(5) Trade unions, on application for certification, should be required to provide statutory information. In addition, trade unions should be required to furnish members with annual financial statements.

(6) Prior approval of the minister should not be required to institute prosecutions.

(7) Safeguards are needed to restrict the powers and operations of the proposed Canada Labour Relations Board, including an appeal to the courts.

In the interests of labour, management and the public, we urge, most strongly, the standing committee's earnest consideration of the above brief and the adoption of amendments to the bill to implement these major recommendations—recommendations which we feel will do much to make the bill a workable piece of legislation.

Yours very truly,

H. GREVILLE SMITH,
Chairman of the Executive.

The VICE-CHAIRMAN: Gentlemen, Mr. Sheridan is available for questioning now, if there are any questions to be asked.

Mr. MERRITT: I have two or three questions I would like to ask, Mr. Chairman.

By Mr. Merritt:

Q. First of all at the bottom of page 4, or well down in page 4, you suggest through the wording of section 2, subsection (p) defining a strike, the only strikes prohibited before the conciliation procedure are strikes "for the purpose of compelling their employer to agree to terms or conditions of employment or to aid other employees in compelling their employer to agree to terms or conditions of employment", but you say "whereas strikes may be called for other purposes;"

Can you give us some examples of the other purposes you have in mind?—A. Yes, Mr. Merritt. What we have in mind are jurisdictional strikes, for example strikes for political motives as mentioned elsewhere.

The VICE-CHAIRMAN: What do you mean by political motives? I think both Mr. Merritt and I would like to know that.

The WITNESS: I think perhaps one of the examples may be in the United States at the present time, when certain groups of employees are striking against political action by the government.

Hon. Mr. MITCHELL: Do you not think we should stay in the Dominion of Canada? The problems we are confronted with at the moment are those that exist in this dominion. Now I know of no political strikes in Canada. If there are any I would like to know about them. In connection with sympathetic strikes I would like to say this to you. That type of strike comes within the jurisdiction of this legislation in that they cannot go on strike until they have gone through the normal procedures of this legislation. I do not think we should get our minds cluttered up with what is happening in another country. What we have in this legislation is the imprint of labour relations as we understand them in Canada, rather than being concerned over what is happening elsewhere.

By Mr. Merritt:

Q. When I asked the witness to give some examples of the strikes he had in mind I did not ask him necessarily for an opinion about them.

The next thing I wish to ask is this. You recommend provision for an appeal from the decision of the Canadian Labour Relations Board to the Exchequer Court. Are you recommending an appeal on law or on fact or on both law and fact?—A. I would say on both law and fact.

Q. Now on page 3 you recommend that it should be laid down as an unfair labour practice to permit intimidation or coercion or to prevent an employee or a member of the public to enter an employer's premises where he has a lawful right to go, or from leaving such premises. Again on page 9 of your summary you want a prohibition respecting mass picketing to prevent entry or leaving of a plant.

That, in fact, exists in the Criminal Code does it not?—A. Yes, that is true but it is thought it might be well to re-state or re-emphasize it in this Act because there is a good deal of public uncertainty about the provision.

Q. Well do you really seriously suggest the putting of the same law in two acts makes it any stronger than having it in one act?—A. I think it might help to clarify it. You have the statement on one side of the case concerning intimidation and coercion and compelling employees, but you do not state it on the other side of the case. It is just a clarification that our committee has in mind.

Q. Do you recommend any change in the wording of the present provision in the Criminal Code?—A. No, that is not contemplated.

Q. I suggest to you that you are probably closer to the point on page 6 when you say "we are convinced that one of the essentials of industrial peace to-day is a whole-hearted observance of the orderly processes of law—" and I must thoroughly agree with you. I suggest to you that once is enough. If you are going to enforce that law, would you not agree with that?—A. Well as I say the thought of the committee in drawing up the brief was to re-emphasize and re-state it.

The VICE-CHAIRMAN: Are there any other questions?

By Mr. MacInnis:

Q. On page 5, and it is again mentioned in the summary, Mr. Smith suggests or proposes that trade unions should be required to furnish annual financial statements to their members. What has that to do with an Industrial Relations Act?—A. Well, in answer to that, it is merely a question of the shouldering of responsibilites as mentioned in the first line or the first two lines of that chapter, commensurate with their other rights. In other words, it is to have labour unions in line with what companies must do for their shareholders.

Q. Surely there is a difference between a labour union and the shareholders of a company. Would not a labour union be more like the Canadian Chamber of Commerce? Then, if you say there should be a section in here compelling labour unions to make financial statements to their members, there should be a section compelling the Chamber of Commerce to make a similar statement because they are on the same basis.—A. Actually the Canadian Chamber of Commerce does that.

Q. That brings me to the question I was going to ask next. Do you know of any trade union that does not?—A. That does not, sir?

Q. That does not furnish a financial statement?—A. No I could not say. I do not think it is applicable because it is just a question of putting it into the bill.

Q. Definitely, if it is already done, I do not see why it should be compulsory by law or to put it in the bill. The bill proposes to do things that we think are socially desirable and that are not being done now or may not be done. I do not see the point. I have been a member of a trade union now for thirty-seven years and I do not know of any trade union that does not furnish a financial statement to its union and which has not that statement audited, either by auditors appointed by the union, or auditors hired by the union.

The VICE-CHAIRMAN: Are you through Mr. MacInnis?

Mr. MACINNIS: For the moment.

By Mr. Timmins:

Q. The Canadian Chamber of Commerce is incorporated is it?—A. That is right.

Q. And you are compelled by law to furnish a statement?—A. That is right sir.

Q. And to post it where it can be seen by the public generally?—A. Oh yes.

Q. On page 2 you suggest the broad powers conferred by the bill on the minister are probably too extensive. Would you expound on that for us? In what particulars?—A. I think it is mentioned further on on page 6. Section 46 (1) and section 56 (1) on page 6 of the brief, outline in detail the points that were to be understood by the committee.

Q. In respect of section 46 where it provided that no prosecution for an offence shall be instituted except with the consent of the minister, I take it then you mean if there is an offence, it just does not lie in the jurisdiction of the minister to prosecute or not prosecute as he determines, but is a matter of criminal law; and anybody may lay an information and it should be left at that?—A. Yes, and another point is that under this clause, as it is here, prosecutions may be disallowed by the minister. It confers broad powers on the minister.

The VICE-CHAIRMAN: As a matter of fact if the committee recalls the C.I.L. brief brought out the very same point. They are in agreement here, and the C.I.L. gave particulars and instances. I think it is the one and only point where the two briefs are in agreement.

Mr. JOHNSTON: I would like to ask a question on page 5 under responsibility of trade unions.

Mr. HOMUTH: A little louder please?

By Mr. Johnston:

Q. On page 5 under responsibility of trade unions Mr. Sheridan read out "we suggest that the word 'may' in section 52 subsection (2), line 1, be deleted and the word 'shall' be substituted".

What is the difference in the legal interpretation? As far as carrying out the administrative part of the Act, what is the difference between the word "shall" and the word "will"?—A. The difference between "shall" and "may"? "Shall" and "may" are altogether different.

Q. In what way?—A. Well you shall do something, or you may do something. One is directive and the other is open to choice.

Q. Are you sure that is the distinction between them when it comes to applying operation?—A. That is the interpretation we put on them.

Q. I am afraid that is not the interpretation the legal department takes because we have had a ruling on that in the House on different occasions. They are interchangeable when it comes to applying liability.

The VICE-CHAIRMAN: That is a ruling from the government side of the House when we like it that way.

Mr. JOHNSTON: That is the definition given by the Minister of Agriculture, you can look it up and see.

Mr. HOMUTH: That explains the whole thing.

Mr. JOHNSTON: I contend there is a difference but the government does not.

The WITNESS: If there is not a difference, then someone made a mistake in drawing up this particular section because "shall" and "may" are used as having different meanings.

Mr. JOHNSTON: Perhaps the minister can explain the difference.

By Hon. Mr. Mitchell:

Q. Getting back to this question of the permission of the minister before a prosecution can be undertaken, I think it is generally agreed and I think you will agree that the purpose of this legislation is for the adjudication of labour disputes. Now, do you not think that someone, even if it is not the minister, should have some power to see to it that trivial questions are not raised to make it impossible to adjudicate these disputes. What I have in the back of my mind is—I am not afraid of any minister, irrespective of the government, but it is possible sometimes that either side could raise technical questions for the purpose of appealing to the courts and slowing up the peaceable settlement of industrial disputes?—A. I think we recognize that.

By Mr. Timmins:

Q. May I ask one more question? On page 5 of your brief, paraphrasing your statement, in so far as it can be done within the terms of the Act we urge that the bill shall be expanded to prohibit specifically. Then, dropping down to number 3,

> Any strike unless a majority of the employees concerned have expressed a desire to strike by a properly supervised secret ballot taken after the expiry of the cooling off period.

What length of time would it take, and would you explain to us the form in which you suggest a secret ballot should be taken?—A. Mr. Chairman, in answer to that question I do not think the committee had in mind any definite way by which a secret ballot would be taken. It is just the principle of a secret ballot.

By Hon. Mr. Mitchell:

Q. Have you any idea how it could be taken?—A. Without specifically suggesting how it could be taken. With regard to the cooling off period, again there was no specific time in the mind of the committee when they wrote that in. There should be a cooling off period.

The VICE-CHAIRMAN: Are there any further questions, gentlemen?

By Mr. MacInnis:

Who would you suggest would supervise the taking of the secret ballot?—A. Again, Mr. MacInnis, the committee did not express themselves in that connection. I have no suggestion to make at the moment.

Q. Do you not think that the mere suggestion of the supervision of the ballot is an expression of opinion that the organization is not responsible and that because it is not responsible some authority must supervise its functions?—

A. No, I do not think so, Mr. MacInnis. I think the secret ballot is not a reflection on any one. It is merely a method of handling the ballot.

Q. Supposing the Department of Labour or the Department of Finance should order a secret ballot in the Canadian Chamber of Commerce to settle some point. Would you suggest it was not an interference with your organization?—A. It would be a question then as to whether or not it would be a problem which affected other groups as well as the Canadian Chamber.

Q. Everything that an organization such as the Chamber of Commerce does, must of necessity, affect the community; that is true of business organizations as well.—A. Well, if the question arose, it may be.

Q. The point I have in mind is what is sauce for the goose should be sauce for the gander. If you suggest a secret ballot then that must inevitably sometime lead to a similar restriction on some other organizations?—A. I agree.

Q. And would become, as you mentioned somewhere in your brief, a serious interference with democratic rights?—A. If it affects all parties equally, I do not think it would be.

Hon. Mr. MITCHELL: Does it not boil down to this, that you can lead a horse to the water but cannot make it drink.

The VICE-CHAIRMAN: I had not any idea we had gotten that far in the problem.

Mr. HOMUTH: The committee on industrial relations last year recommended that a secret ballot under the supervision of the Department of Labour be taken before any strike could take place. Of course, that was not carried out but the committee last year made such a recommendation, practically unanimously.

The VICE-CHAIRMAN: I am glad you said "practically". The minister saw the wisdom of the minority report and did not carry out the report.

Are there any further questions, gentlemen?

By Mr. Lockhart:

Q. I want to ask for a very brief explanation of page 7, clause 1. Could we have a bit more elaboration on that?—A. You are speaking of, "inadequate provisions to prevent any member—"?

Q. Yes.—A. It is a question of principle involved there, sir. If a man has been involved in a dispute, he should not sit in judgment on that dispute.

Q. Have you any instance in mind?—A. No.

Q. It is just a matter of principle?—A. Yes.

By Hon. Mr. Mitchell:

Q. When you speak of the fact they should not sit in judgment, if I can put words in your mouth, do you mean the members of this national board, whether employer or employee representatives, should not sit in judgment on a case involving his own organization or his own company?—A. Yes, that is the point.

The VICE-CHAIRMAN: It is not the practice, is it?

Are there any other questions, gentlemen? There being no further questions we will excuse Mr. Sheridan.

The next brief we have is from the Canadian Manufacturers' Association and will be presented by Mr. Barrett.

O. H. Barrett, Member of the C.M.A. Committees on Legislation and Industrial Relations, called:

The WITNESS: Mr. Chairman and gentlemen: The Canadian Manufacturers' Association welcomes the opportunity that has been given it of making representations on Bill 338, being the Act cited as "The Industrial Relations and Disputes Investigation Act". As the labour relations of the national transportation and communication services will be regulated under this Act, the association is vitally interested because any serious interruption of such services will affect manufacturers and could jeopardize the whole economy of the nation. Also this measure is important by reason of the fact that the provincial legislatures, in order to secure uniformity in labour relations, may adopt many of its provisions.

The association adopted at its 1946 annual meeting a statement of labour policy entitled "An Approach to Employer Employee Relations", a copy of which is attached hereto. It will be seen from this that the association regards the chief objective of Canadian industry to be a high standard of living for all Canadians, which, in turn, depends upon the maintenance of a high level of production. To achieve such a high level, there must be full and harmonious co-operation between employees and employers. To promote such full and harmonious co-operation, the association believes that:

> Both employees and employers should—Observe faithfully the provisions of every agreement or undertaking made by them or on their behalf.
>
> Settle differences by negotiation in good faith without interruption of operations.

and that

> Employers should—Respect the rights of employees to associate freely for all lawful purposes.
>
> Bargain collectively, in cases where representatives have been freely chosen by a majority of the employees affected, on wages, hours of work, and working conditions.

and that

> Employees should—Recognize the employer's right to plan, direct and manage the business. . .
>
> Recognize the right of an individual employee to join or not to join any lawful organization of employees or other citizens without impairing his right to work at the occupation of his choice.

The association therefore in making the following representations has applied the above-mentioned principles. Experience of the operation of the Wartime Labour Relations Regulations P.C. 1003, has shown, it is submitted, that collective bargaining can be satisfactorily carried on only if the rights and responsibilities of the parties thereto are put on an equal footing. Bargaining between one party who is legally responsible and another party who is not can never be satisfactory. Collective bargaining should be made a two-way street; in other words, the rights conceded by the employer to the union should be balanced by equally effective rights conceded by the union to the employer.

Under this bill, important rights are given to employees and trade unions as citizens in a free democracy, these rights should be balanced by correlative duties which are enforceable. For these reasons, the following representations contain a proposal that trade unions be registered in Canada and a proposal that union funds be available for any penalties which may be levied against the unions by the courts for offences committed under the Act. It should be made clear that, in the association's view, the principle of equality before the law really requires that trade unions should be made legally responsible through incorporation. It recognizes, however, that such a provision does not come within the scope of a bill which deals with collective bargaining and conciliation, and submits that consideration should be given to the introduction of separate legislation designed to achieve this object.

Considerable attention has also been given in this submission to the "settling of differences by negotiation in good faith without interruption of operations". The maintenance of a high level of production which includes a high level of transportation services, is vitally necessary for the Canadian economy especially at this time, among other reasons, in order to supply Canadian consumers and export markets with needed goods and to check inflation, and above all, to obtain "a high standard of living for all Canadians".

The association notes that there is no provision in the bill to empower any authority to order the inclusion of a union security clause in a collective agreement, and we would be strongly opposed to any such provision being added.

The following are our specific representations with respect to various sections of the bill:—

1. Section 2 (1) (i).

It is submitted that the definition of "employee" in section 2 (1) (i) should be changed by substituting for clause (i) the following wording:—

(i) any person who exercises management or supervisory functions or is employed in a confidential capacity;

The present wording might result in a considerable number of minor supervisory officers being included in the bargaining unit. It is not desirable that such persons as foremen or any other real supervisor, should be treated as "employees" for collective bargaining purposes. These persons are representative of management in collective bargaining either in negotiating or in carrying out the agreement. It is felt that the word "management" alone might refer only to persons like managers or superintendents who are mentioned in the present wording, but this, we submit, is too restrictive.

A person employed in a confidential capacity, even though not concerned directly in matters relating to labour relations should not be included in the bargaining unit, because such a person should not be put in a position that might induce him to disclose confidential information such as the financial affairs of the company, which should not be disclosed to the union.

2. Section 2 (2).

It is submitted that after the word "strike" in line 17 be inserted the words "which is not contrary to this Act."

There should be no basis for an employee to claim employee status where he has gone on strike contrary to the Act and the employer dismisses him or refuses to reinstate him.

3. Section 3 (1).

It is submitted that there should be added to section 3 (1) the words "and also the right to refrain from being or cease to be a member of a trade union".

This change, it is submitted, is necessary in order properly to apply the principle of freedom of association, which in our view, requires that an employee should have the same right to refrain from joining a trade union, as he has to join one. He should also have the right to resign from the union.

On the same reasoning, we would approve of a corresponding addition being made to section 3, subsection 2.

REGISTRATION OF TRADE UNIONS

4. It is suggested that a new section 3A should be added to read as follows:

Section 3A

(1) With the coming into force of this Act, every trade union or union subject to this Act shall forthwith register with the Department of Labour on terms prescribed by the minister and shall register annually

> thereafter. No registration of a trade union shall be permitted unless the union maintains an office or resident agent in Canada.
>
> (2) No unregistered union shall be entitled to bargaining rights or other rights or privileges under this Act.
>
> (3) The provisions of this Act shall apply to unregistered unions except as otherwise provided by this section.

This suggestion implements a proposal contained in the opening remarks of this submission. At present, it is often extremely difficult to obtain any reliable information regarding trade unions and their officials. It is intended by recommending registration to secure some measure of definiteness and responsibility with respect to trade unions. This would give the Department of Labour, employers and the public, some information about trade unions. It is particularly desirable that the employer be enabled to ascertain with whom he is dealing.

The applicant should be required to maintain an office or resident agent in Canada. In our view, it is anomalous and unsound to grant the extensive rights which are granted under this Act to parties who do not reside in Canada and are not fully subject to Canadian law. As stated before, bargaining with a union is not real bargaining, unless there is some way of reaching the union without going outside of Canada.

UNFAIR LABOUR PRACTICES

5. It is submitted that a new subsection (5) should be added at the end of section 4 which will read as follows:—

> Nothing in this Act shall be deemed to prevent the expression of any views, arguments or opinion by an employer or anyone on his behalf, if such expression contains no threat of intimidation, reprisal or force.

The purpose of this subsection is to remove any doubt that the employer's freedom of speech, within reasonable limits, is not unduly interfered with. The employer like any other citizen, should enjoy freedom of speech subject to reasonable limits.

6. Section 5.

It is submitted that the following subsections should be added to the section as it now reads:—

> *Subsection 2.*
>
> No trade union, and no person acting on behalf of a trade union, and no employee, shall support, encourage, condone or engage in any activity intended to restrict or limit production, but which does not constitute a strike, but no act or thing required by the provisions of a collective agreement for the safety or health of employees shall be deemed to be an activity intended to restrict or limit production.

It is submitted that any restriction of production by a "slowdown" or other means should be an "unfair labour practice". The proviso at the end of this subsection ensures that the employees will not be required to work so hard as to impair their safety or health. As pointed out in our opening remarks, the goal of Canadian industry is a high level of production.

> *Subsection 3.*
>
> No person, persons or trade unions shall issue or cause to be issued, publish or distribute any pamphlet, bulletin, notice or other similar or comparable material relating to any of the terms and conditions of employment with an employer, without the date of issue and the name

> and address of the person, persons or trade union official or officials resident in Canada responsible for the issuing, publication, or distribution of such material.

It is submitted that this is essential in order to prevent the issuing and distribution of anonymous bulletins which may contain misstatements of fact, and even libels.

Subsection 4.

> No person, persons or trade unions shall engage in or in any way support or condone mass picketing or any form of picketing which in any way prevents or intimidates an employee or other person from entering or leaving the premises or property of an employer or which in any way prevents the carrying or transporting of goods, material, equipment, machinery or other movable property to or from the premises or property of an employer.

While we recognize that the Criminal Code makes it an indictable offence for anyone to prevent employees or others from entering the premises of their employer, against whom a strike is in progress, there is considerable public uncertainty as to the law and it would in our view, be well that the principle should be clearly stated in this Act and in more detail than in the Criminal Code.

Subsecton 5.

> No trade union shall authorize, declare, participate in, condone, support or in any way encourage its members to participate in, condone or support a sympathy strike or a secondary boycott.

In our view, the definitions of "strike" and "to strike" contained in section 2, subsection 1(p) and 1(q), do not meet the situation which the proposed subsection 5 attempts to meet. We refer to the case where the employees of an employer in whose plant there is no dispute, refuse to work with materials supplied by a particular supplier against whom a strike is in progress. The employer whose employees thus refuse to work with materials from and for the "struck" plant, has no way of securing relief because the dispute which has caused the stoppage in his plant is not his direct dispute.

7. Section 6(1).

It is submitted that this subsection should be deleted for the reason that it is in conflict with the principle that an individual has as much right to refrain from joining a union as to join a union.

CERTIFICATION PROCEDURE.

8. Section 7(1)

It is suggested that the following words should be added at the end of subsection (1):—

> Provided the applicant union does not already possess bargaining rights for another unit in the same establishment of the employer.

The purpose of segregating bargaining units is to group employees on the basis of community interest. It would, it is submitted, be anomalous if two separate units have been segregated in a particular plant, to permit the same union to represent such separate units. The segregation has been made precisely because there was no community of interest between the employees in the one unit, with the employees in the other unit, and if the same union were permitted to represent the two units, it is submitted that the interests of the two separate units would not be properly safeguarded.

Communiy of interest is referred to in our next submission.

9. *Section 9(1).*

It is submitted that at the end of this subsection, the following sentence should be added:—

> The board in determining the appropriate unit shall have regard to the community of interest among the employees in the proposed unit in such matters as work location, hours of work, working conditions and methods of remuneration.

It is believed that such guidance should be given the board in its determination of the appropriate unit; otherwise the unit might quite conceivably embrace any combination of employees, with divergent and very often conflicting interests.

A similar provision is contained in the Nova Scotia Trade Union Act.

10. *Section 9 (5).*

It is submitted that this subsection should be deleted and the following substituted therefore:—

> *(5)* Notwithstanding anything contained in this Act, no trade union the administration, management or policy of which is, in the opinion of the board, dominated or interfered with by an employer so that its fitness to represent employees for the purpose of collective bargaining is impaired, shall be certified as a bargaining agent of employees, nor shall an agreement entered into between such trade union and such employer be deemed to be a collective agreement for the purposes of this Act.

This change is virtually only replacing the word "influenced" by "interfered with" and rearranging the wording so that "dominated" and "interfered with" are in conjunction. It is considered that "influenced" is too broad and general a term. The use of this word here might result in the refusal of certification to unions which were influenced by an employer who made some legitimate expression of opinion. It is only improper interference which should disqualify. Also it should be noted that in section 4(1), line 33 of this bill the words "interfere with" are used.

11. *Section 9(6).*

It is submitted that a new subsection 6 should be added to section 9, to read as follows:—

> When an application for certification has been made by a trade union in respect to a bargaining unit and the application has been refused by the board for reasons other than a defect in form or technical irregularity, the trade union shall not be entitled to apply again for certification in respect of that bargaining unit until a period of at least six months has elapsed from the date of its previous application.

While it appears to be the general practice of labour relations boards not to permit trade unions to re-apply for certification within six months of the time in which a previous application was made, it is submitted that this rule should be contained in the Act itself for the guidance and protection of the Board and to reduce unnecessary applications. The right to re-apply in less time in the event of some minor defect has, it will be noted, been preserved.

REVOCATION OF CERTIFICATION

12. *Section 11.*

It is submitted that section 11 should be amended to read as follows:—

> 11. Upon application the board may revoke such certification where in its opinion a bargaining agent no longer represents a majority of employees in the unit for which it was certified, and thereupon notwith-

> standing sections fourteen and fifteen of this Act, the employer shall not be required to bargain collectively with the bargaining agent, but nothing in this section shall prevent the bargaining agent from making an application under section seven of this Act after a period of six months has elapsed.

As the section stands, there is no provision for bringing to the attention of the board the fact that a union no longer represents the majority of the employees in the unit for which it was certified. It is desirable that procedure for doing this should be prescribed in the Act. The phrase to be added at the end of the section is designed to prevent immediate re-application by a trade union after it has been decertified under this section.

Notice to Negotiate

13. It is suggested that an entirely new section 13A be added after section 13, to read as follows:—

> *Section 13A.*
>
> The notice required under sections 12 and 13 shall specify the names of the bargaining committee who shall qualify for such committee as provided in section 14A otherwise the party receiving the notice may treat it as a nullity.

This suggestion, it is submitted, would facilitate the negotiations and the information is important enough to warrant giving it in advance of the first negotiations. Moreover, it will help ensure that section 14A as next proposed will be complied with.

14. It is suggested that an entirely new section (14A) be added after section 14, to read as follows:—

> *Section 14A.*
>
> The bargaining committee or the persons or representatives authorized to bargain collectively for or on behalf of a bargaining agent shall all be employees in the unit provided that one person who is not an employee may be added to such committee, and the persons who bargain for or on behalf of the employer shall all be persons regularly employed by the employer and may include the employer, if a person, provided that one person who is not employed by the employer may be included among the persons who bargain for or on behalf of the employer.

It is submitted that since trade unions are to be certified rather than bargaining representatives, then the bargaining committee should with the exception of one outside person be employees in the unit. This makes for a better atmosphere in negotiations, because the negotiating parties know each other better, and also have a better knowledge of local conditions in the plant.

15. *Section 14(b).*

It is submitted that this subsection should be deleted.

In our view, it is unnecessary since no employer who has received notice to commence collective bargaining is likely to reduce wages, and thus antagonize the employees in question, unless he is forced to do so by circumstances beyond his control. If such circumstances should occur, and the employees refuse to consent to a reduction of wages, the effect might be to jeopardize the employer's business. In all the circumstances, it does not appear that the prohibition against a decrease in wages would facilitate collective bargaining, and it is therefore submitted it should be deleted. Furthermore, the subsection is, in effect, a retention of wage control. It constitutes an interference with employers' rights and could not be complied with in emergency situations which constantly arise for various reasons requiring an employer to shorten the hours of work or to re-arrange an employee's scheduled vacation.

16. *Section 15*(*b*).

The reasons submitted for the deletion of section 14 (*b*) also apply to section 15 (*b*).

CONCILIATION

17. *Section 16.*

It is suggested that this section should be changed by deleting clause (*b*) line 26 and substituting the following:—

> (*b*) Collective bargaining has taken place over a period of at least 30 days;

It is desirable that conciliation officers be not called in until the parties have bargained for some little time and are convinced that an agreement cannot be reached without outside assistance. Thirty days appears to be a reasonable time in which the parties may either reach an agreement or ascertain the points on which they are at variance. Such a provision is found in Sec. 11 of the Wartime Labour Relations Regulations P.C. 1003 and has therefore become accustomed practice.

STRIKES AND LOCKOUTS

18. *Section 24A.*

It is suggested that a new subsection 24A should be added to read as follows:—

> Notwithstanding anything contained in sections 21, 22, and 23 or otherwise in this Act, no trade union shall authorize or declare a strike and no employee shall strike unless the majority of the employees in the bargaining unit have expressed a desire to strike in a secret ballot conducted under the direction of the board.

It is submitted that a vote of the employees affected should always be held immediately before a strike is declared. Otherwise strikes may be declared contrary to the wishes of the majority of the employees. Strike votes, if taken at the proper time, it is submitted, would result in fewer work stoppages. It is desirable that the strike votes be supervised by an outside authority in order that the door may not be open to intimidation or coercion and that the results of the voting may be regarded as recording the real wishes of the majority. You will note that Nova Scotia and B.C. have similar provisions.

19. *Section 24B.*

It is submitted that a new section 24B should be added immediately following section 24A, above proposed, to read as follows:—

> *Section 24B.*
>
> (1) Where the employees in the bargaining unit have gone on strike, the board, on the application of the employer, and on being satisfied that there is good reason to do so, and that it would in its opinion aid the settlement of the dispute and the cessation of the strike, may direct a vote to be held by secret ballot to determine the views of such employees and any matter involved in or arising out of the dispute.
>
> (2) Such vote shall be taken upon such notice and subject to such provisions, conditions, stipulations and restrictions, and the ballot shall be in such form, as the board may direct.

(3) The employer and the trade union or unions concerned and the employees in the unit shall, on the request of the board, furnish to the board such assistance, facilities and information as may be reasonably requested by the board for the taking of such vote.

(4) The board shall publish the result of such vote.

This provision would complement our proposal of a strike vote, under the preceding item, and taken with such provision, would carry out recommendation 6 of your committee in its report presented to the House of Commons on August 17, 1946. It should aid, it is submitted, in keeping any work stoppages which do occur, to a minimum; a result which, as stated in our opening remarks, is necessary in order to maintain a high level of production.

20. *Section 32(8).*

It is recommended that subsection 8 of section 32 be deleted. Under the Wartime Labour Relations Regulations, a person may be represented by a barrister, solicitor or advocate and it would appear that the proceedings were facilitated by reason of the presence before the conciliation boards of persons trained to appear before courts and administrative boards. There seems no valid reason why any person should be deprived of legal advice or assistance when appearing before a conciliation board.

21. *Section 33(1).*

It is suggested that the following words should be added in section 33(1) after the word "it" on page 16, line 1:—

> and things of a confidential nature.

It is intended by this submission to prevent information reaching the other party, the public or competitors of the employer about the finances of the party, trade secrets or other matters of a confidential nature which might injure the party in its credit, reputation, competitive position or public relations.

Also it is submitted that unless such a proviso is added, the fact-finding procedure contemplated would open the door to the making of demands which were tantamount to "a fishing expedition." It is submitted that an employer and trade union have a right to protection against such abuse of this section.

22. *Section 34.*

It is submitted that this section be amended by inserting after the word "therein" in line 24, the following words: "which concern the matters referred to the board"; also after the word "mentioned" in line 26 insert the words "concerning the matters referred to the board;".

Under this section, the power to enter a building, ship, vessel, etc. is granted only where it concerns matters referred to the conciliation board.

It is just as important that the inspection and view of any work, material, machinery, etc. be confined so as to concern only the matters in reference. Likewise the interrogation of any persons found therein should be so limited. Otherwise confidential information might be disclosed having no relevance to the matter in reference. Again, this power should not be used as a "fishing expedition" which might injure the employer in the ways referred to in the preceding item respecting section 33 (1).

ENFORCEMENT

23. *Section 39.*

It is submitted that section 39 should be deleted.

If sections 14 (*b*) and 15 (*b*), are deleted as proposed above, this section becomes unnecessary because it is the enforcement clause for the provisions of these subsections.

24. *Section 41 (5).*

It is submitted that the following new subsection 5 should be added to section 41:—

> (5) Where employees strike, if they are members of a trade union or of a unit of employees in respect of which a trade union has been certified under this Act or if they are bound by a collective agreement entered into by a trade union or if a collective agreement has been entered into on their behalf by a trade union, the occurrence of the strike shall be evidence that the trade union authorized or declared the strike.

This new section would provide a measure of responsibility on the part of trade unions for the acts of their members which contravenes this Act. This is a duty to be imposed on trade unions correlative with their right to act for, and on behalf of the employees in the unit. Several reasons are given in our opening remarks for such a correlative duty. It may be noted that the employer is responsible for the acts of his managers or agents.

COLLECTION OF FINES

25. *Section 45.*

It is submitted that the following new subsections (2) and (3) be added to section 45:—

> (2) Where a fine is imposed upon an employers' organization or trade union pursuant to a conviction for an offence under this Act, any person who is a trustee of, or otherwise holds property or moneys on behalf of the employer's organization or trade union, or the members thereof as such members, may, notwithstanding the terms of the trust or other terms under which he holds the property or moneys, dispose of the property and out of the proceeds of the disposal thereof or out of the moneys, pay the fine and, if the fine is not otherwise paid in full, the said person shall pay the fine or any part thereof not so paid.
>
> (3) Every person who is a trustee for, or holds property or moneys on behalf of an employer's organization or trade union, or the members thereof as such members, and who fails to pay any fine imposed on the employer's organization or trade union under this Act within fifteen days after the said fine becomes payable is, if the said fine has not then been paid in full, guilty of an offence and liable on summary conviction to a fine equal to the value of the property or the amount of the moneys so held by him on the day the fine was imposed on the employer's organization or trade union but not exceeding the amount of the said fine that is unpaid on the day upon which the said person is convicted of an offence under this section.

These provisions have been referred to in our opening remarks where we pointed out the need for effective sanctions to enforce the provisions of the Act. It is obvious that if an Act is not enforced, it is not of much use. No Act can be properly enforced if the sanctions are not effective against some of the parties concerned. This would be the effect under this Act unless some method such as proposed, is provided for the collection of fines.

INQUIRIES

26. *Section 56(1).*

It is submitted that this subsection should be amended to read as follows:—

> 56(1). The minister may either upon application or of his own initiative, where he deems it expedient, make or cause to be made any inquiries he thinks fit regarding industrial matters with a view to promoting industrial peace or settlement of disputes.

It is not expected that the minister would abuse the power given by the clause proposed to be deleted but none the less it is almost always preferable to allow the parties to settle matters for themselves or along the regular lines of procedure elsewhere laid down in this Act. It has been rather upsetting and only justifiable in war time to have the government cut across the regular procedure. It does not, it is submitted, make for stable labour relations. The law should be certain and therefore the minister's power under this Act should be definite and specific, and not vague and general.

Hon. Mr. MITCHELL: If I might interrupt; that section has been in the I.D.I. Act for forty years.

LABOUR RELATIONS BOARD

27. *Section 58(1).*

All the preceding submissions have been predicted on the composition of the labour relations board being such as fairly and competently to handle the matters which come before it and to represent adequately the viewpoint of employees and employers. The following suggestions are respectfully made with a view to aiding in the achievement of this result, though it is recognized that in the last analysis everything will depend on the particular qualifications of the individuals appointed by the government.

It is submitted that the chairman of the proposed Canada labour relations board should be or should have been a member of the judiciary. It is apparent that the experience and impartiality of the judiciary make it the most appropriate panel from which to select a competent chairman for such an important board.

Consideration should be given to providing for a panel of employer representatives and a panel of employee representatives from which the board could be kept up to full strength at all times.

28. *Section 60(2).*

It is submitted that a new subsection 2 should be added at the end of section 60:—

> (2) The hearings of the board shall be open to the public.

It is an important principle of British and Canadian justice and in the public interest that laws should be administered in the open.

29. *Section 60(3).*

It is submitted that there should be added a new subsection 3 to section 60 to read as follows:—

> (3) The board shall publish its decision in every case.

The decisions of the board will be important and it is obviously in the public interest that its decisions be made public. Also parties in other cases are entitled to know for their guidance what the decision has been in preceding cases. Moreover, it is probable that greater care will be taken in reaching a decision in any case if the reasons for the decision must be put in writing.

APPEAL

30. *Section 61(2).*

It is submitted that this subsection should be amended by adding at the end thereof the following words:—

> saving always the right of any party to the proceedings to appeal on a question of law arising out of any decision or order of the board to a judge of a superior court, whose decision shall be final.

It is most important there should be the right of appeal on matters of law from decisions of the board. Unless this is permitted, there is danger that a decision of the board may not be in accordance with the provisions of the statute and that a person may be deprived of some of his rights under the law. An appeal on matters of law will ensure that the board is properly interpreting this legislation.

All of which is respectfully submitted,

Canadian Manufacturers' Association (Inc.)
C. B. C. SCOTT,
Chairman,
Industrial Relations Committee.

Ottawa, July 1, 1947.

The Chairman: I appreciate that this has been a long brief. There may be some things upon which you would like to question the spokesman. He is now at your disposal.

By Mr. Homuth:

Q. On page 11, section 18, there is the question of the taking of a vote. There is a point there on which I am not just clear, and on which I would like to have your view; does the vote depend upon the majority of those employed or on a majority of those voting?—A. It says "the majority of the employees in the bargaining unit", Mr. Homuth. That would be the majority of employees in that unit and not those voting.

Mr. Maybank: That would mean anybody not voting would be counted in the negative.

The Vice-Chairman: Mr. Barrett, at the bottom of page 2, in connection with —"equality before the law really requires that trade unions should be made legally responsible through incorporation,"—would you give us an example in any country where trade unions have been incorporated as you suggest there?

The Witness: I cannot give you any example, Mr. Chairman, of that, no. Also, for the purpose of any questioning, I do not want to appear rather uninformed on this, but, unfortunately we were not able to bring any members with us who have been working daily with this type of thing due to the holiday and the short notice. If there are any questions which I cannot answer I will try to get the answers for you.

The Vice-Chairman: Well you have some people over there, perhaps you could ask them?

Mr. Merritt: Surely, Mr. Chairman, in Great Britain they have a very similar provision. It might not amount to incorporation but it does amount to registration.

The Vice-Chairman: We have a similar sort of registration in this country, as a matter of fact, except that no one pays much attention to it.

Mr. Merritt: It is in the Dominion Act and could be enforced. I presume that is all that is meant.

The Vice-Chairman: That is not what he was thinking of in this. You will see that if you read the whole paragraph.

Hon. Mr. Mitchell: Compulsory incorporation.

Mr. Merritt: That was the only reason I spoke up. I have one question I would like to ask. On page 6, your submission No. 5. You want a new subsection added to section 4 which would reserve to employers the right of free speech within reasonable limits.

What part of the bill, in your opinion, endangers the employer's right of free speech?

The WITNESS: It is not that it should be necessary to state it but to preserve it, that it should be made clear. There are a number of sections in this bill which might be taken to be a statement of ordinary law, but this is merely a matter of accenting or underlining the other sections in the bill.

Mr. MERRITT: My question is what section now interferes with this right of free speech?

Mr. THOMPSON: May I speak to that. Subsection 3 says "No employer shall by intimidation—"

The CHAIRMAN: Page 4.

Mr. THOMPSON: "or any other kind of threat—". Under the present regulations we know that we can speak, but we think there is a great deal of doubt and this would make it clear.

Mr. MERRITT: You are referring to section 4, subsection 3.

Mr. THOMPSON: That is the worst one.

Hon. Mr. MITCHELL: May I ask you sir, if you can legislate on a hypothetical case? When you are legislating do you not draw on your experience?

Mr. THOMPSON: Well we have had experience and employers have been afraid to speak for fear they would infringe upon such a provision.

Hon. Mr. MITCHELL: Do you know of any case where an employer has not spoken; where there has been any prosecution?

The WITNESS: Well, there have been cases on the border of that, the National Paper Goods case of Hamilton, and I think due to American decisions there has been some feeling by employers that there is a danger which these regulations should prevent.

The VICE-CHAIRMAN: The difficulty is, gentlemen, that we must not get ourselves involved with American decisions. In some respects their law went further than ours, and, in some other respects, not far enough, but any instances you have should relate Canadian cases if possible.

Hon. Mr. MITCHELL: If I may say this about the American bill, I think there is too much law and not enough common sense in it.

Mr. ADAMSON: There is nothing in this Act to prevent an employer from putting his case in front of his employees?

The VICE-CHAIRMAN: Nothing at all.

By Mr. Knowles:

Q. Could I ask Mr. Barrrett what the purpose of incorporation is, in the case of a corporation?—A. That is rather a lengthy point I would think. The simplest explanation is that the application of a corporation, which is usually the way an employer carries on business, (there are partnerships of course,) fixes the responsibility under the Companies Act or similar types of legislation, whereas with an organization which is composed of individual members, it is a matter of the responsibility of the whole group and there is no legal entity to the group as such, except the members that compose it.

Q. Does not incorporation in this case also have the effect of limiting liability?—A. It might.

The VICE-CHAIRMAN: That is what it will do. That is the quick answer to your question. It limits liability.

Mr. KNOWLES: The purpose of incorporating unions seems to me to extend the liability.

The WITNESS: I think it crystallizes it, if I may suggest a word.

Mr. MAYBANK: It would also have this result if they were incorporated. The liability of individuals would be limited as the liability of shareholders is limited, but it is also recognized that in certain cases charters of companies may be revoked. If you require unions to be incorporated, obviously the right to revoke incorporation would be there, and suddenly a trade union could be found without its birth certificate whereby it had the right to be in existence in the land. That would be one possible effect of incorporation. An incorporated trade union without a birth certificate or a charter of incorporation, could cease to live very quickly if some person decided upon an arbitrary act. Now we would hope, of course, at all times the government would not act in such an arbitrary fashion, but still it does put the trade union at the mercy of some person in cases of difficulty.

The WITNESS: I do not want the committee to think that is what we conceived to be the only method. What we were striving for was a crystallized responsibility of the union and this was a suggested method.

By the Vice-Chairman:

Q. Tell me, do you handle labour relations for the board, for the organization?—A. Do I personally?

Q. Yes.—A. No, but I am a member of the committee.

Q. Who handles your labour relations?—A. Mr. Thompson.

Q. I wanted to put a question to you but I did not want it to be an unfair question. I will ask Mr. Thompson because you know this Act fairly well.

Mr. THOMPSON: Yes.

The VICE-CHAIRMAN: I have in mind the enforcement sections, from 39 on? You know it?

Mr. THOMPSON: Yes.

The VICE-CHAIRMAN: Let me put the case of an employer who does not like the business agent, does not like the president, and does not like unions. There may be some such person.

Mr. THOMPSON: Yes.

The VICE-CHAIRMAN: And the employer decides to fire the union representative? Am I right that under this Act he could be hailed into court and fined for that?

Mr. THOMPSON: Yes.

The VICE-CHAIRMAN: And be forced to pay wages? Is that correct?

Mr. THOMPSON: Yes, he may under section 42.

The VICE-CHAIRMAN: Never mind the section, but he may.

Mr. THOMPSON: Yes.

The VICE-CHAIRMAN: That is correct is it not?

Mr. THOMPSON: Yes.

The VICE-CHAIRMAN: Now that may happen once, it may happen twice, and it may happen a dozen times with the same employer. Is that correct?

Mr. THOMPSON: Yes.

The VICE-CHAIRMAN: Then, so long as the employer wishes to be fined, he can continue firing anyone whom he pleases, is that correct?

Mr. THOMPSON: Yes, but he would get an awful lot of adverse publicity.

The VICE-CHAIRMAN: Wait a minute, we are not talking about adverse publicity, just follow me. Is there anything in the Act that compels him to reinstate any employee whom he has fired after the court fined him and made him pay the back wages?

Mr. THOMPSON: No, but the employee would have recourse to the civil courts.

The VICE-CHAIRMAN: The employee is completely out.

Mr. THOMPSON: No, he may apply to the court and he may be entitled to reinstatement under his contract.

The VICE-CHAIRMAN: Wait a minute, he may be entitled to reinstatement, but under what contract?

Mr. LOCKHART: Mr. Chairman, on a point of order, you are both talking very quietly and we cannot hear. I object to a dialogue of this kind between the chairman and a witness.

The VICE-CHAIRMAN: I have been trying to speak loud.

Tell me,—you say he may be able to obtain his rights under his civil contract. Do you know of any employee in any shop or in any factory who has a civil contract with the employer?

Mr. THOMPSON: Yes, every employee has an implied contract. It is not in writing but he has an implied contract under the Ontario law, and he is entitled to reasonable notice and he can apply under the provisions of the Master and Servants Act.

The VICE-CHAIRMAN: What is reasonable notice?

Mr. THOMPSON: It all depends on the status of the employee.

The VICE-CHAIRMAN: Very well then. Assume we have given him reasonable notice, and we pay him for the reasonable notice, is there anything in the Act that requires an employer to reinstate an employee?

Mr. THOMPSON: No.

The VICE-CHAIRMAN: Do you know P.C. 1003?

Mr. THOMPSON: Yes I do.

The VICE-CHAIRMAN: Do you remember P.C. 4020?

Mr. THOMPSON: Yes.

The VICE-CHAIRMAN: Do you mind telling the committee what P.C. 4020 contained?

Mr. THOMPSON: It was an order in council which provided machinery for investigation of cases of persons being fired for union activity or discrimination. After an investigator looked into it he reported to the minister and the minister could make an order or otherwise deal with it as he wished. I think in some cases the minister did make an order but the minister would know that.

Hon. Mr. MITCHELL: I can answer that point. P.C. 4020 was prepared under my jurisdiction and it was an order to prevent discharge for union activity. If a man claimed that he had been discharged, or his organization claimed that he had been discharged for union activity, a commissioner was appointed and made an investigation. I approved of whatever the commissioner recommended. If the commissioner recommended it, the man was paid his back wages and reinstated.

The VICE-CHAIRMAN: Mr. Thompson, could I put it to you this way? Under this Act as it stands at the present time, is it fair to say that a determined employer, who does not regard cost as important, could keep any union out of his shop?

Mr. THOMPSON: You mean by such a practice?

The VICE-CHAIRMAN: Yes.

Mr. THOMPSON: Well I had not considered that but, as an off hand opinion, I would say perhaps he could.

Mr. HOMUTH: It is pretty far-fetched is it not?

The VICE-CHAIRMAN: I have opened up the subject and there are some lawyers about here and I wish they would follow it up. I do not want to stress anything in particular but I felt that this witness knew the Act and had dealt with P.C. 1003. I asked the witness before him if he was a lawyer and he said no. This witness seemed to know, and he does know, the Act very well.

Mr. THOMSON: They are both lawyers.

Mr. BARRETT: I did not say I was not a lawyer.

The VICE-CHAIRMAN: I was referring to the witness before you.

Mr. JOHNSTON: The procedure you have outlined, Mr. Chairman, would have to be done with every single employee before the employer could abolish the union.

The VICE-CHAIRMAN: What was that you said Mr. Johnston?

Mr. JOHNSTON: The course you pointed out would have to be taken with respect to every single employee. You had summed up by saying the determined company could get rid of the union that way. Would the process not have to be applied to every single employee?

The VICE-CHAIRMAN: That is right, but you know what I had in mind. The employer could constantly fire officers of the union and in that way make the union ineffective or without force.

Mr. KNOWLES: It has a bearing on this whole question of equality between employer and employee.

Mr. THOMPSON: It would be a case of making the employer pay a price continually.

The VICE-CHAIRMAN: I prefaced my remarks by saying "if he disregarded cost".

Mr. MERRITT: I think you have a hypothetical case there, because, in all probability, there would be a strike first.

The VICE-CHAIRMAN: Not without them waiting the three months, and, the minister points out, it would be an illegal strike so there you are.

The WITNESS: I do not know of any manufacturer, Mr. Chairman, who would even consider running his business on that basis. He would not last very long.

The VICE-CHAIRMAN: I put the possibility to you, under this Act, as to what would happen with a determined employer. I will leave it at that.

Hon. Mr. MITCHELL: I think, Mr. Chairman, I might say this; you cannot legislate for the exception to the rule. I believe most employers are decent people and so are most trade union leaders. They are the people you have to consider.

The VICE-CHAIRMAN: Are there any further questions, gentlemen?

By Mr. Timmins:

Q. May I ask a question? On page 3 of the brief, the second paragraph sals,

> Considerable attention has also been given in this submission to the settling of differences by negotiation in good faith without interruption of operations.

Now, I presume what is meant would be negotiation by collective bargaining, conciliation and probably this secret strike vote which has been suggested. Is there anything else which is included there in the term, "without interruption of operations"?

Mr. THOMPSON: If I might explain that, Mr. Chairman. We had in mind there that you would keep negotiating. You would not have to have conciliation.

This is taken from our submission on labour policy attached to the back of the brief. The settling of differences by negotiation in good faith means negotiation; it does not mean conciliation or anything else.

Mr. TIMMINS: You are not taking into account then the particular section having to do with conciliation at all. You are suggesting that the parties must be made to continue negotiating?

Mr. THOMPSON: That should be the aim of good labour relations, that negotiations should be carried on. You should not have to call in outside parties.

Hon. Mr. MITCHELL: Would not this be a fair thing to say? I have had some experience in these matters and invariably the first person who comes to me when he is in trouble is the employer. He waits until he is in trouble. The trade unions do, also, of course and invariably they ask for a conciliator; that is both sides. Now, many of the employers and many of the newer trade unions do not know what we call in trade union language, "the game". These conciliators are skilled in wage negotiation. You must have some machinery, it would seem to me and I think you will agree, to assist the parties in a dispute.

Mr. THOMPSON: We think the first thing to do is to keep the negotiations going. It happens in the majority of cases by far, in 90 per cent of the cases. Occasionally, you have to have conciliation and even then you may have to have a strike vote.

The WITNESS: It is all contained in the approach to employer-employee relations at the back.

By Mr. Timmins:

Q. I should like to ask Mr. Barrett one question if I may. This is a personal question and he may not care to answer it. In the plant with which you are concerned, do you have union men and non-union men employed?—A. Yes.

Q. You have both?—A. Yes.

Q. So, this suggestion you make on page 2 recommending the right of the individual employee to join any general lawful organization of employees is in effect now in a good many plants?—A. Yes, I suppose it is.

By the Vice-Chairman:

Q. May I ask one more question?—A. But the statement in this Act or the specific suggestion is that having stated that they have the right to join, then perhaps it would be fair to say that the statement should also be made, if the first one is necessary, that he should have the right to refrain from joining; that is all that is suggested.

Q. May I ask you one question? In the course of your brief I think you said you were opposed to union security clauses; that was part of your brief?

Mr. THOMPSON: At the end of page 3.

The VICE-CHAIRMAN:

> The association notes that there is no provision in the bill to empower any authority to order the inclusion of the union security clause in a collective agreement.

Later on, you made reference to some action which was taken by the committee last year with respect to secret ballots. You do remember that last year's committee, composed of the same people, recommended a measure of union security be given with all contracts; you recall that?

The WITNESS: I remember there was some reference to it, but what the reference was I do not recall.

Mr. ADAMSON: A measure of union security were the words.

The VICE-CHAIRMAN: What we had in mind was the check-off system. I think that is a correct statement on behalf of the committee. I believe that is what the committee had in the back of its mind.

Mr. ADAMSON: Up to a point.

The VICE-CHAIRMAN: Let us not say what we had in the back of our minds, but a measure of union security following certification; have you given thought to that?

The WITNESS: Yes, as a matter of fact, stated briefly our view is that if a union negotiates with its employer and secures some form of union security, that is a matter for agreement between the parties. We do not think legislation should enforce it upon employers as a matter of legislation.

By the Vice-Chairman:

Q. Does it?—A. I do not think this Act does but it has been asked for.

Mr. MERRITT: Perhaps, to use your words, Mr. Chairman, the minister must have listened to the wise minority.

By Hon. Mr. Mitchell:

Q. Coming back to the question of voting, can you tell me any way—you make the suggestion I should conduct votes or the minister should conduct votes under the direction of a board—do you know of any way you can make a person vote who does not want to vote under our system of government?—A. I would say that the record of the percentage of votes in most elections would be the answer to that, Mr. Minister.

Q. I am talking about industrial disputes now?—A. I do not think you could.

The VICE-CHAIRMAN: That is not the point they have in mind when they ask you to take a vote. It is not that they want the minister to force people to vote. The suggestion, if I know it, is that the vote is an intimidated vote and they want one which is held free from intimidation.

The WITNESS: I do not think we go so far in our suggestions. We say, in effect, the vote which is held which is not a secret vote may be subject to intimidation. I think for that very reason our British method of balloting for members of parliament and elective officers is held in great secrecy.

By the Vice-Chairman:

Q. You have actually practised it, I hope?—A. I have indeed. I do not think any improper connotation should be taken from that suggestion. It simply means if it is good enough for the election in this counrty, it is good enough for this purpose.

Mr. HOMUTH: That is the very question I had intended to raise. Should it be the majority of those voting or the majority of those in the bargaining unit? The minister has said you cannot force men to vote.

The VICE-CHAIRMAN: If a man does not vote it is counted against the thing. It is the majority of the voting unit.

Mr. JOHNSTON: According to this brief.

Mr. ADAMSON: I think labour is very strenuously objecting to that clause. They have pointed out that a great many of us who are here are minority candidates and not elected by a majority of the people. What we are trying to arrive at is a method of taking the vote so that the largest percentage of opinion possible will be registered. I think that is it.

The WITNESS: It could be pointed out that in the certification section it is the majority of those in the bargaining unit which is required to certify the particular union. You might put it on the same basis.

The VICE-CHAIRMAN: Are there any further questions, gentlemen? If there are no further questions, I should indicate that we sit at four o'clock to-morrow afternoon. We will have presentations from the Railway Association of Canada; the Joint Legislative Committee; the Railway Transportation Brotherhood. We will have a brief from the Catholic Federation of Labour. They have indicated that they are sending a brief. Then, there are a few minor things which the steering committee will decide immediately after this meeting. We may, with some luck, complete this business to-morrow.

Now, a question arises about which some members spoke to me concerning the question of Mr. Conroy. He had not presented appendix B to his brief. I am told that appendix B is a summation of the labour laws of the provinces to show the actual confusion of labour laws. This will not be ready until Friday. It is not possible to get it ready before then. I think we might as well go ahead and question Mr. Conroy to-morrow because he has to leave. We could complete our questioning so that we could then devote ourselves to dealing with this bill section by section.

We have another bill on which Mr. Knowles is keeping his eye, upon which we must also make a decision. It may take us a little while. Will the steering committee please remain? Thank you very much, Mr. Barrett. The meeting is now adjourned.

The committee adjourned at 5.50 p.m. to meet again on Wednesday, July 2, 1947, at 4.00 p.m.

APPENDIX "B"

NOVA SCOTIA BARRISTERS' SOCIETY

Court House

Halifax, N.S.,

June 25, 1947.

Right Hon. J. L. Ilsley,
Minister of Justice,
Ottawa.

Dear Sir,—On behalf of the Nova Scotia Barristers' Society, I wish to protest against the clause in the labour bill recently introduced in parliament limiting the rights of lawyers to practice before the "Conciliation Board".

This society submits that the right of the subject to have legal representation at any judicial or quasi-judicial hearing is a British tradition which should not be refused under any circumstances.

I believe it has been urged in the past that corporations were able to provide eminent counsel while labour organizations lacked the financial means to be properly represented. This is definitely not the situation to-day. Labour organizations to-day are possessed of ample means to provide the best presentation possible of their claims. There is therefore no longer any justification for restricting employers in the presentation of their case.

We therefore strongly urge that the clause objected to by this Society be eliminated from the labour bill.

Yours very truly,

(sgd) W. deW. BARSS,
President.

APPENDIX "C"

VANCOUVER BAR ASSOCIATION

Whereas Section 32(8) of Bill No. 338, being "An Act to provide for the investigation, conciliation and settlement of industrial disputes" makes provision as follows:—

Procedure

> 32(8) In any proceedings before the conciliation board, no person except with the consent of the parties shall be entitled to be represented by a barrister, solicitor or advocate and, notwithstanding such consent, a conciliation board may refuse to allow a barrister, solicitor or advocate to represent a party in any such proceedings.

And whereas such provision is the negation of the democratic rights of parties before conciliation boards and is an unwarranted restriction imposed on and discrimination against a section of the public in the conduct of a profession which has contributed much to the public life and welfare of Canada;

Therefore be it resolved that this association urge upon the Prime Minister of Canada, the Minister of Justice and the Minister of Labour that it is in the public interest that the said Section 32(8) be deleted from the said bill.

Vancouver, B.C., June 25, 1947.

APPENDIX "D"

Victoria BC June 27—1947.

The Honourable Minister of Justice
Parliament Bldgs Ottawa

The members of the Victoria Bar Association strongly oppose limitation on rights of lawyers to practice before conciliation board in labour bill now pending in Parliament and urge you to oppose such limitations with all vigour stop the right to representation by counsel is a heritage paid for in blood by our forefathers and is one assurance of justice from bodies acting in semi-judicial capacities.

G. F. GREGORY
Secretary

APPENDIX "E"

Halifax N.S. 25 43 S.P.

Right Hon. J. L. ILSLEY KC PC
Minister of Justice
Ottawa.

The vice president for Nova Scotia of the Canadian Bar Association has supplied me with copy of telegram received by him from the president stating that labour bill introduced in Parliament contains clause limiting rights of lawyers to practice before conciliation boards and that such a statutory prohibition on the right of members of the legal profession to practise their profession should be strongly opposed. I entirely agree with the views of the president of the Canadian Bar Association as I am sure you do also, and would urge that this clause be deleted from the bill. The Nova Scotia Labour Code, enacted at the last session of the Legislature, follows closely the revised draft bill prepared in the Department of Labour at Ottawa but omits the clause referred to by the president.

J. H. MACQUARRIE, *Attorney General.*

APPENDIX "F"

THE LAW SOCIETY OF UPPER CANADA
OSGOODE HALL
TORONTO, 2

June 21, 1947.

The Rt. Hon. J. L. ILSLEY, P.C., K.C.,
Minister of Justice,
Ottawa.

DEAR SIR,—Ref.-Bill 338, June 17, 1947, House of Commons.

This will confirm my telegram of this date to you as follows:

> The attention of the Law Society of Upper Canada has just been directed to bill 338, June 17, 1947. The Industrial Relations and Disputes Investigation Act. Section 32(8) is a restrictive clause with

reference to appearance of lawyers before conciliation boards. This society is strongly opposed to any restriction of traditional rights of the legal profession or to the rights of the public to be adequately represented by competent legal advisers. Letter follows.

On Tuesday, the 17th instant, bill No. 338, an Act to provide for the investigation, conciliation and settlement of industrial disputes, received its first reading in the House of Commons. It has just been brought to the attention of the Law Society of Upper Canada that section 32(8) is a restrictive clause with reference to the appearance of lawyers before conciliation boards.

I am instructed to inform you that the Law Society of Upper Canada is strongly opposed to any restriction of the traditional right of the legal profession to practise before any judicial or quasi-judicial tribunal, and in particular is opposed to the diminution of the rights of the public to be adequately represented at such hearings by competent legal advisers.

The Society is not unmindful that Cap. 112, R.S.C. 1927 contained a somewhat similar restrictive clause, but it informed that P.C. 1003 suspended the provisions of the Act referred to, and since 1944 lawyers have been accustomed to represent their clients whenever their services were required before labour tribunals. The legal profession as represented by this Society is of the opinion that the restrictive clause should certainly not be included in the new Act.

The Society desires the opportunity of making oral representations before the Industrial Relations Committee, if such are necessary. It will be greatly appreciated if I might be notified forthwith of the appropriate date for appearance before the committee.

The Society is fully conscious of your continued interest in the profession and in the protection of the rights of the public and the profession, and respectfully requests your attention to and interest in this matter.

Yours sincerely,

W. EARL SMITH,
Secretary.

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Canada. Industrial Relations, Standing Cttee on, 1947

SESSION 1947

HOUSE OF COMMONS

Law RR

STANDING COMMITTEE

ON

INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

WEDNESDAY, JULY 2, 1947

WITNESSES:

Mr. Pat. Conroy, Secretary Treasurer, Canadian Congress of Labour, Ottawa;
Mr. A. H. Brown, Departmental Solicitor, Department of Labour, Ottawa;
Mr. A. B. Rosevear, K.C., Railway Association of Canada, Montreal;
Mr. A. R. Mosher, National President, Canadian Brotherhood of Railway Employees, Ottawa;
Mr. W. A. Green, General Manager, Hudson Bay Mining and Smelting Company, Flin Flon, Manitoba.

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MINUTES OF PROCEEDINGS

WEDNESDAY, July 2, 1947.

The Standing Committee on Industrial Relations met at 4.00 o'clock p.m. The Vice-Chairman, Mr. Croll, presided.

Members present: Messrs. Adamson, Archibald, Baker, Beaudoin, Charlton, Cote (*Verdun*), Croll, Gauthier (*Nipissing*), Homuth, Johnston, Lafontaine, Lapalme, Lockhart, MacInnis, McIvor, Maloney, Maybank, Merritt, Mitchell, Ross (*Hamilton East*), Timmins, Viau.

The Chairman read the second report of the steering committee. Debate followed.

On motion of Mr. Maybank, the said report was concurred in.

Mr. Pat Conroy, Secretary-Treasurer, Canadian Congress of Labour was called. He was questioned on his presentation to the Committee on Monday, June 30.

Mr. A. H. Brown, Departmental Solicitor, Department of Labour, Ottawa, assisted during the questioning.

At 4.40 o'clock p.m., the Committee suspended its proceedings to enable members to attend a division in the House.

The Committee resumed at 5.05 o'clock p.m.

The witness was retired.

A brief filed by the Dominion Joint Legislative Committee, Railway Transportation Brotherhoods was considered. As there was no representative in attendance when called, the Chairman read the brief.

Mr. A. B. Rosevear, K.C., Assistant-General Solicitor, Canadian National Railways, Montreal, was called. He read a prepared brief submitted by the Railway Association of Canada, Montreal, and was questioned.

The witness was retired.

The Committee adjourned at 6.00 o'clock p.m., to meet again this day at 8.00 o'clock p.m.

The Committee resumed at 8.00 o'clock p.m. Mr. Croll, the Vice-Chairman, presided.

Members present: Messrs. Adamson, Baker, Beaudoin, Blackmore, Charlton, Cote (*Verdun*), Croll, Gauthier (*Nipissing*), Homuth, Johnston, Jutras, Knowles, Lafontaine, Lapalme, Lockhart, MacInnis, McIvor, Maloney, Maybank, Merritt, Mitchell, Timmins, Viau.

Mr. A. R. Mosher, National President, Canadian Brotherhood of Railway Employees, was called. He read a prepared brief and was questioned. Mr. M. W. Wright, Legal Counsel for the union, assisted during the questioning.

The witnesses were retired.

Mr. W. A. Green, General Manager, Hudson Bay Mining and Smelting Company, Limited, Flin Flon, Manitoba, was called. He read a prepared brief and was questioned.

Mr. Mitchell, the Minister of Labour, tabled a copy of correspondence between his department and the Minister of Labour, Manitoba, and the Premier of Saskatchewan relative to the Hudson Bay Mining and Smelting Company.

It was ordered that this correspondence be printed as part of the record.

The witness was retired.

The Committee adjourned at 9.25 o'clock p.m. to meet again at 10.30 o'clock a.m., Thursday, July 3.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

House of Commons,
July 2, 1947.

The Standing Committee on Industrial Relations met this day at 4.00 p.m. The Vice-Chairman, Mr. D. A. Croll, presided.

The VICE-CHAIRMAN: Gentlemen, I present to you the third report of the steering committee. At a meeting held on the 1st of July, your steering committee considered additional applications to appear and make representations to the committee in respect of Bill No. 338. You have a list of the people who have applied before you.

In addition to the national parent or central organizations invited the following applications have been received:

1. United Steel Workers of America (District Six), Toronto, Ont.
2. United Steel Workers of America (Local 3505), Hamilton, Ont.
3. National Organization of Civic Utility and Electrical Workers, Room 300, 74 King Street, East, Toronto, Ont.
4. Lumber and Sawmill Workers Union, Timmins, Ont.
5. International Union of Mine, Mill, Smelter Workers (District Number 8), Sudbury, Ont.
6. United Automobile Workers, C.I.O., Windsor, Ont.
7. Ontario Federation of Labour, Toronto, Ont.
8. International Woodworkers of America, Vancouver, B.C.
9. St. Catharines Trades and Labour Council, Thorold, Ont.
10. (Local Number 3), Canadian Seamen's Union, Thorold, Ont.
11. Niagara United Labour Committee, Niagara Falls, Ont.
12. Director of Canadian Congress of Labour (Montreal Region), Montreal, P.Q.
13. Local, United Electrical Radio and Machine Workers of America, Toronto.
14. Local No. 528, United Electrical Radio and Machine Workers of America, Montreal.
15. Local No. 504, United Electrical Radio and Machine Workers of America, Hamilton.
16. Local No. 507, United Electrical Radio and Machine Workers of America, Toronto.
17. Local No. 514, United Electrical Radio and Machine Workers of America, Toronto.
18. Local No. 518, United Electrical Radio and Machine Workers of America, Lachine.
19. Local No. 520, United Electrical Radio and Machine Workers of America, Hamilton.
20. Local No. 521, United Electrical Radio and Machine Workers of America, Leaside.
21. Local No. 523, United Electrical Radio and Machine Workers of America, Welland.

22. Local No. 524, United Electrical Radio and Machine Workers of America, Peterborough.

23. Local No. 527, United Electrical Radio and Machine Workers of America, Peterborough.

24. Local No. 529, United Electrical Radio and Machine Workers of America, St. Catharines.

25. Local No. 531, United Electrical Radio and Machine Workers of America, Montreal.

26. Secretary, Canadian Congress of Labour, Montreal Region, Montreal, P.Q.

In following the decision of the committee, it was agreed that these organizations were associates and affiliates and that representation had been provided by hearing the parent or central organization of each.

In line with the decision to hear only central or national organizations, it is recommended that the same procedure be followed in regard to the printing of briefs or other submissions received.

An application received from the Revolutionary Workers Party, Toronto, was also reviewed. It was considered that it is not a representative national body.

In addition to the acknowledgment sent to the above organizations, it was agreed that the chairman would send a telegram to each setting forth the decision of the committee.

Also considered was an application from the Canadian Brotherhood, Railway Employees and other Transport workers. It is noted that units of this union have affiliation with organizations already heard by the committee but, in view of its distinctive character, it was thought special consideration should be extended. It is recommended that this union be invited to appear and make representations.

We also heard representations from the Hudson Bay Mining and Smelting Company Limited with respect to a particular claim on which there was complete agreement between the provinces and the dominion and employers and employees. It was recommended Mr. Green be heard.

It is recommended that Thursday, 3rd July, be set as a target date for the completion of the hearing of all presentations.

That is the report. Will someone move concurrence?

Mr. LOCKHART: Mr. Chairman, I am very interested in hearing your report. In this connection, some days ago I received a telegram from a large group of organizations in my own community, the Niagara district, which takes in a section of the country in which our chairman is also interested; a highly industrialized area called the Niagara Peninsula. This telegram urged that all interested organizations appear before the committee regarding Bill 338.

It is not my desire to go contrary of the wishes of the steering committee. In fact, I think the steering committee has exercised extremely good judgment. On the other hand, I see in the list which has been presented to us that a number of the organizations represented in this telegram are from the Niagara Peninsula and are represented here. I will not take the time of the committee to read the telegram except to say that it is signed by the corresponding secretary and is in regular form. It says they are associated with the Trades and Labour Congress, affiliated with the A.F. of L. and the Dominion Trades Congress.

Now, Mr. Chairman, I find myself in a very difficult position. I should like to get a little guidance from this committee as to what I should do or perhaps there might be some expression of opinion that would help one in a difficulty of this kind. I think the minister will find himself in the same difficulty.

Recalling the brief which was presented by the Trades and Labour Congress I find that Mr. Bengough in his very splendid presentation said this;

> It is our considered opinion that Bill 338 retains the basic principles of order in council P.C. 1003 in that it establishes the right of employees to organize a union and it prohibits the employer from interfering with that right.

Then, later on he says,

> In view of the foregoing we are prepared to accept the provisions of Bill 338 as it now stands. In the meantime, on behalf of the Trades and Labour Council we accept Bill 338 as worthy of enactment.

Then, attached to this brief as submitted by Mr. Bengough there is a document which says this,

> An all out war effort demanded a national labour code. A peace effort also requires a national labour code. The time for concerted action is ripe if we are to have a worth while national labour code. All trades and labour councils, . . .

This is underlined, Mr. Chairman.

> All trades and labour councils and affiliated unions must now become active.

That is underlined.

The VICE-CHAIRMAN: You remember what Mr. Bengough said he meant by that?

Mr. LOCKHART: Yes.

The VICE-CHAIRMAN: He said they were to see their provincial member; that is what he told us.

Mr. LOCKHART: Apparently this letter sent out on December 12 brought some concerted action. It is that action that I say has me completely bewildered and befuddled to-day.

To-day, I received from the Niagara district area the following communication from the same gentleman who urged that all these groups be heard. This is headed "St. Catharines District Trades and Labour Council, Affiliated with A.F. of L. and Dominion Trades Congress." Under the date of June 30, I received this communication pointing out several things but I will not take the time of the committee to read them. They are all in opposition to Bill 338. There are three resolutions, Mr. Chairman. Reading these resolutions in the light of Mr. Bengough's statement, I am completely confused.

The second resolution says,

> Be it resolved we reject the proposed Bill 338.

Resolution No. 4 is,

> Instruct Council executive to proceed to organize mass meetings in the city to protest Bill 338.

No. 5 is,

> Request whole Niagara Peninsula to take similar action in the interest of organized labour.

Now, Mr. Chairman, I find it very hard in the light of these conflicting views, the parent body having presented a brief, and this request by a circular letter requesting the members to go out and consider these matters. I find myself very confused and a bit befuddled. I just wondered to whom to listen; whether I am to listen to the Niagara district views, expressed, or whether I am to listen to Mr. Bengough.

The VICE CHAIRMAN: That is why you are a member of parliament. You can find the truth.

Hon. Mr. MITCHELL: It is easy to explain. The trade union organizations in this country have what they call legislative bodies, mouthpieces. Nationally, there is the Canadian Congress of Labour which speaks for its affiliated organizations on national legislative questions arising out of resolutions discussed at the annual convention. The Trades and Labour Congress of Canada does the same thing for its affiliated unions. The running trades have their legislative bodies; that is, a railroad organization to speak for their respective organizations on the railways. Then, of course, you have the National Catholic Syndicate to speak for their organizations and so on.

Let me say this quite clearly; I have had dozens of telegrams. I suppose I would get more than most people. If we listened to all the people who wanted to come here, we would never finish up our hearings. There are some people who are rather anxious to come here for other reasons than purely trade union matters. We all know that or we should know it at least, or we should not be members of parliament. It is for this reason they establish national organizations.

Representations, I assume, in connection with provincial matters would be taken by the Ontario Federation of Labour, I think they call it, or the executive board of the Trades and Labour Congress of Canada and a like organization in the Canadian Congress of Labour. It is a physical impossibility, Mr. Chairman, to listen to the representations from local organizations of which there are probably 6,000 or 7,000 in the dominion who want to come here. It was for this reason they established these national trade union organizations. There, all the policies affecting the national government are crystalized and expressed by that organization. These officials are elected annually at the respective conventions. I think that is perfectly clear.

Any representations having to do with provincial legislation are, by the very nature of things, going to be made by provincial organizations set up for that purpose and be presented to the provincial governments. There is nothing new in any disagreement in a large organization. There is a disagreement amongst the CCF, the Liberals, the Progressive-Conservatives and even amongst our friends the Social Crediters. Mr. Bengough, Mr. Conroy, Mr. Best and Mr. Kelly, who will speak for the railroad organizations, quite properly reflect the crystalization of the views of their organizations on a national basis.

Mr. MAYBANK: I think it is necessary for some person to move the adoption of the report. It seems proper that one who is a member of the steering committee should do it since it is partly his act. For that reason, I do so. I should like to say, for the benefit of Mr. Lockhart particularly, that in thus getting up so soon to move adoption, I did not mean to be sharply controversial of the remarks he made. I can quite understand the difficulty there which I fancy the minister has disposed of as well as it can be done.

I am sure we must all agree we have to have representations on a national basis, otherwise we are just never going to get through. I know everybody wants to see this legislation passed subject to whatever amendments may be considered wise as we go along. It is with that idea in mind that I move the adoption of the report.

Mr. MACINNIS: I am not going to oppose the adoption of this report. I appreciate there is a point at which a line would have to be drawn. That point would have to be that we could not hear representations from just local organizations. I believe that because of the very short time this bill is before us it has put us in a very awkward position. We are now faced with the prospect of jamming it through this committee and we will be faced with the prospect of jamming it through the House.

Proposals have been made that we should sit ten hours a day to deal with labour legislation, whereas most of the workers are demanding a 40-hour week. We will be sitting at least a 50 hour week. I think it is regrettable that, knowing legislation of this kind was coming before parliament, so little time was allowed from the time of the introduction of the bill until the hearings on it had to be completed.

Now, the national organizations in making representations to this committee have, of necessity I believe, to get in touch with their people across the country to find out what they think of it. No matter what we may think or what the national officials may think, all the wisdom does not rest in them any more than it rests in us. We should have an expression of opinion from as wide a constituency as possible. I think we will find a great deal of resentment among the workers of the country at the speed in which this legislation has been forced through parliament. They will inevitably come to the conclusion that, because there were flaws in the legislation, it was held back so there would not be time to consider them and make the necessary representations in regard to them.

I may say, for myself, I was rather surprised at the blanket approval that the officials of the Trades and Labour Congress gave to this bill. Personally, I cannot understand it. However, that is their business. They have just as much right to their point of view in this matter as I have to mine. If they wish to approve of the bill, they have done so I imagine after a full study and they know what they are doing. I can quite understand Mr. Lockhart's difficulty.

The VICE-CHAIRMAN: Shall the motion for the adoption of the steering committee report carry?

Carried.

Now, gentlemen, this is briefly what is before us. The Catholic Syndicate has sent in a brief which your chairman cannot read because it is in French. I have had to have it translated and I will probably have it to-morrow. This organization is not going to appear. They preferred to send in the brief and that will be available to-morrow. We have the railway people here, Mr. Best, appearing for the legislative group. He will find he will be very popular with the committee because his brief is less than two pages. He does not particularly care whether he appears or not. The other gentlemen have a very fine brief, only four pages. We have two additional briefs, both of which will be ready to-night.

I propose, while we are still fresh, that we dispose of Mr. Conroy. He desires to get away, so we might dispose of him and then we could go on with the other two briefs. Perhaps we can complete those this evening. We will call Mr. Conroy first.

Pat Conroy, Secretary Treasurer, The Canadian Congress of Labour, recalled:

Mr. Conroy is prepared to answer questions, gentlemen.

Mr. LOCKHART: Appendix B is not ready as yet?

The VICE-CHAIRMAN: No, it will not be ready until Friday. It will not affect the views of this organization on the bill as it is only for our information.

Mr. MACINNIS: I think, perhaps, the best way to deal with Mr. Conroy would be to question him, if anyone desires to, on the amendments which are proposed to certain sections of the bill.

The VICE-CHAIRMAN: Yes, the field is wide open.

Mr. HOMUTH: In view of the fact this organization has prepared its brief on the bill according to the clauses, we could deal with it pretty much in that manner instead of jumping from one clause to another.

The VICE-CHAIRMAN: A member may be interested only in one or two things, but he may make reference to them. The field is wide open to you.

By Mr. MacInnis:

Q. I think Mr. Conroy was proposing an amendment to section 2, subsection (*h*). There was a phrase, I believe, in the old Industrial Disputes Act which is not in this Act. I believe the phrase on the old Act was,

> "Without limiting the generality of the foregoing, includes any dispute or difference relating to . . ."

I think that phrase, "without limiting the generality of the foregoing . . ." is not in the present Act.

Mr. HOMUTH: What page are you reading from?

The VICE-CHAIRMAN: Appendix A, the first page.

The WITNESS: My opinion of that, Mr. MacInnis, is that we would believe in the interest of security those things should be specified in the legislation.

By the Vice-Chairman:

Q. As being things which may possibly be contained in the agreement, not that they must?—A. Quite.

By Mr. Timmins:

Q. May I ask the witness a preliminary question? On page 2 of your brief you refer to the Canada Temperance Act case. Then there is a considerable amount of argument in respect to the proposed bill 338. I should like to ask this question; does your group suggest that the constitutional question should be raised now and that the enactment of this bill should await the disposition of it or do you want to have the dominion legislate fully upon the labour field across Canada now, basing its authority for so doing on the Canadian Temperance Act case, or do you suggest that this parliament pass a model Act now which will not invade the previously recognized jurisdiction of the province and which legislation the provinces can, one by one, coordinate with? What are you suggesting to this committee; which of these three branches are you suggesting this committee should pursue now?—A. I believe we have suggested five alternative proposals. Basically, we would prefer an amendment that would be applicable throughout the whole of the country. Now, following upon the preliminary statement yesterday on behalf of the C.M.A. calling upon assistance in legal questions, I am going to ask for permission for Doctor Forsey to answer that.

The VICE-CHAIRMAN: Yes, but I do not think you understood the question. As I understood the question, it is whether you want a bill now or whether you want to wait for some constitutional change?

By Mr. Timmins:

Q. Yes, it has been suggested that, having regard to the Canada Temperance Act case, the dominion government has the power now to legislate in this whole field across the country. There is the power to legislate fully on labour matters because it is a matter which is in the paramount interests of the dominion. Are you suggesting that this government should base its legislation upon that Act; that we should legislate now for a national labour code with full power across the country?—A. I think that involves a statement of policy on behalf of the Congress upon which Dr. Forsey would not, perhaps, be able to take a position. Therefore, I will answer your question.

We believe, rightly or wrongly, and in making this statement we are not deprecating the position of the government or yet of anyone involved in drafting proposed bill 338, but we do believe, because of what we call a lack of positive leadership on the part of the dominion government in falling back on the expected opposition from the provinces, knowing that opposition would come up anyway, they have not as yet explored the possibility of the appropriate amendment to the Act. We are faced with this consideration, and I say to you quite frankly we do not like it. Because of the time factor and the exploring of the controversy that would relvolve around the passing of an amendment to the B.N.A. Act we, of course, have no choice left other than to push for the best possible bill we can secure at the present time.

By Mr. Archibald:

Q. There is one question which I should like to ask. Did you take into consideration opposition that will come from the various provinces for interfering with their rights? Do you believe that the social conditions within labour itself are at such a stage of development that the dominion should take the lead in spite of that opposition from the provinces at this time?—A. Well, I made the same observations as part of my reply to the honourable gentleman here. Now, I know it is all very well to castigate a government or governments. They are always popular targets, no matter what their political colouration may be. In spite of that I do believe the position of the government in the matter of the labour code has been, through inactivity, the government has not provided the positive leadership necessary to draw the provinces out of the morass of confusion into which they have got themselves in the matter of economic and social relationship. I quite understand there would have been more disagreement on the part of the provinces involved but, nevertheless, the goals which I hope we are trying to reach would have been much nearer being reached than we are now.

The VICE-CHAIRMAN: Are there any further questions, gentlemen?

By Mr. MacInnis:

Q. I do not think Mr. Conroy dealt with the question which I asked. Mr. Timmins came in with the broader question of constitutionality.

The VICE-CHAIRMAN: It was the $64 question for the moment.

By Mr. MacInnis:

Q. You have included in appendix A a suggested amendment to subsection (8) of section 2. Would you want to include all the points in your amendment in the definition?—A. What page is that on?

Q. It is on page 1 of appendix A. You say,

> We recommend the addition of the following at the end of this paragraph: "And without limiting the generality of the foregoing, includes any dispute or difference relating to, (i) wages, allowances—and so on."

You continue with that to the end of the page?—A. We believe when you talk about industrial disputes you do not talk about the isolated settlement of a dispute, you are talking about the whole range of things which may be involved in employment. It is because of that we do suggest all those things which are relative to any dispute which may or may not take place should be included.

Q. You do not think that is covered in the present definition of a dispute?—A. We do not think so.

By the Vice-Chairman:

Q. While you are at it, I read from section i that this is an improvement on P.C. 1003 in that it includes, I think—tell me if you agree with me—domestic servants, agriculture, hunting and trapping?—A. I think it is an improvement, sir.

Q. Does it include domestic servants?—A. We think so.

Q. Do you or do you not?—A. We think so.

Q. I said I thought it did, but I was not sure.

Mr. JOHNSTON: You just mentioned domestic servants; do you mean agriculture, hunting, trapping and so on?

The VICE-CHAIRMAN: In addition to domestic servants, agriculture, trapping, hunting and so on are included. I just wondered if he agreed with me. I wonder if the department agrees with that.

Mr. BROWN: We did not consider it necessary to exclude them because it was not under our jurisdiction anyway and therefor it was an unnecessary exclusion. They did not come into the picture.

Mr. MACINNIS: Would not the definition of employee here be restricted when you apply it to an industry which would be covered by this Act? "Employee" here must, of necessity, mean an employee in an industry which would come under this act. It cannot take care of an employee in an industry that is not under this act and domestic servants do not come in that category?

The VICE-CHAIRMAN: My purpose in asking the question was, as I understand it, this bill should give leadership to the provinces and I particularly mentioned domestic servants to indicate to the provinces it is not our intention to exclude them.

Mr. JOHNSTON: It does not include them because they do not come within an industry covered.

The VICE-CHAIRMAN: They are included by implication because they are not excluded.

Mr. JOHNSTON: You mean it includes them, but they cannot come under the Act.

The VICE-CHAIRMAN: It is a provincial matter except in the Yukon and the Northwest Territories.

By Mr. MacInnis:

Q. In connection with the works which come under the jurisdiction of this Act you say in page 2 of your brief in the last paragraph,

> The bill also omits two of the specific heads of the old Act and paragraphs 5 and 7 of section 3 (*a*), Works, undertakings or business belonging to, carried on or operated by aliens, including foreign corporations emigrating into Canada to carry on business;

and,

> Works, undertakings or business of any company or corporation incorporated by or under the authority of the parliament of Canada.

Do you feel that those are two important omissions from the Act?—A. The only chance is, Mr. MacInnis, in line with the old Act we believe a provision of a dominion nature should be as wide as possible.

Q. I certainly think, "Works, undertakings or business of any company or corporation incorporated under the Dominion of Canada" should come under the Act. The question of union incorporation came up in some way—

The VICE-CHAIRMAN: It was in the brief of the Manufacturers' Association.

By Mr. MacInnis:

Q. Do you wish to say anything about that?—A. The only thing is I was surprised at the C.M.A. not bringing forward as well as its brief, a rope with a noose around it because they seemed to have in mind that they are going to hang the trade unions. As to incorporation, according all the respect and sobriety to which a brief coming before this committee is entitled, it seems to me that the people who are perennially demanding industrial peace are the ones who are eternally confronting this country with things which create industrial unrest. I do not think they are conscious of what their demand for incorporation of trade unions means. Let us reduce this to proper language.

What the Manufacturers' Association wants is to sue the trade union movement—

The VICE-CHAIRMAN: There is the division bell. We will adjourn until after the vote.

At this point, the committee adjourned during a division in the House.

The committee resumed following the division.

The VICE-CHAIRMAN: Order, gentlemen. Now that our victory in the House is complete let us start all over again. I think Mr. MacInnis was asking a question. Probably he had better ask it again.

By Mr. MacInnis:

Q. I said some mention had been made to the incorporation of unions during the presentation of a brief and I asked Mr. Conroy if he had anything to say on that point. The question may arise again.—A. Mr. Chairman, when the House of Commons called its servants to vote I left off speaking with regard to the purpose of incorporation. The basic purpose, regardless of all the verbiage which is around it—responsibility and all the rest of it—is to put trade unions in the position where employers can sue the trade unions. It rarely occurs to employers that when they have so put trade unions in that position so as to be enabled to sue them they also put trade unions in the position where the trade unions are also in a position to sue the employer; without consideration of the mutual aspect of that problem which would arise from incorporation. It is my suggestion now that incorporation of trade unions would lead to more disputes and a great disharmony in industrial relations than any other thing that I know of. Basically, a trade union can only violate a contract in one way; that is by going on strike during the life of the contract. On all other provisions of the contract, almost without exception, the employer is obligated to do something in that contract; and he would be a very perfect employer indeed if at some time or other he did not violate that contract and the terms thereof. So that by putting labour in the position to be sued labour would probably return the compliment five-fold by suing the employer five times more than the employer could sue the trade union. The net result of that would be complete industrial chaos, and with all due respect to our legal friends—and I am not speaking with my tongue in my cheek—

The VICE-CHAIRMAN: You will need those lawyers yet.

The WITNESS: —or with a twinkle in my eye which they credited Mr. Bengough with. The result would be a legal vendetta with the principal employers on one side and the trade unions on the other being left outside looking into the arena which they themselves are supposed to operate and control.

So much for the implications of incorporation, a contributor to chaos in the industrial field.

Now, why should unions be forced to incorporate when employers are not compelled to incorporate; it is still optional with employers? That is one question employers have not chosen to answer. There are many other points invloved in incorporation. We have noted down the points and the result of the strong emphasis placed on them yesterday which raised a multitude of questions.

At what point should a union be forced to incorporate? Before it starts organizing? Before it signs its first contract?

Would a charter be granted on mere application, or would the government or a government department have discretion to grant or refuse, and thus to prevent a union from functioning, even under incorporation?

Could a charter be revoked, and if so, on what grounds?

Does incorporation imply supervision, and if so by whom?

What power would judges have to declare an incorporated union in receivership and appoint receivers, under court control to manage the union's affairs?

Would unions be required to incorporate under dominion or provincial laws, or could they choose, as businesses do?

Should the national or international union be required to incorporate, or all the locals too?

These are only a few of the troublesome questions that arise when incorporation is proposed as a medium to solve the problem of industrial relations.

I suggest, Mr. Chairman, that while great responsibility is required in the trade union field as in all other fields—and I suggest even in the House of Commons as well—basic to more responsibility is more wisdom on the part of employers and trade unions, and the responsibility will follow. Incorporation will not generate great wisdom; it will only dislocate what may be developing good relationships and make the effect worse than the cause.

The VICE-CHAIRMAN: Are there any further questions? Let us try to get off the briefs. There is nothing in this bill, of course, dealing with incorporation; it was a suggestion made by the Canadian Manufacturers Association, and I think it was merely a suggestion.

Mr. Conroy, may I ask you a question? I asked one of another gentleman yesterday with respect to reinstatement under section 39, I think it is. In any event, I think this bill in effect provides that under the enforcment section in the case of an employer who is guilty of practices which are considered reprehensible under the Act, he can then be charged before a magistrate, he can be found guilty and fined, he may have to pay arrears of wages, or he may have to pay money in lieu of notice. Now, is there anything in this Act that would provide for reinstatement in the case where a man was discharged for union activities?

The WITNESS: Mr. Chairman, I examined this Act quite carefully for a number of very important points; because like all other legislation there are major and minor phases of it. One of the things I have been looking for in this Act, and I do not find it, is a provision for reinstatement. I do believe it must be there if there is a legitimate interest in the interest of the trade union movement, because an employer for good reasons or bad, unless subsequently subject to the law, may dismiss an employee or employees as has happened in a good many cases. He may dismiss an officer or officers of a local union, so long as he is not compelled to reinstate those officers or employees who are in many cases men who have a strong interest in maintaining the union and in many cases are the guiding individuals in the union. It is one of the direct methods of slashing a local union; and we would ask particularly before any bill is passed by the House of Commons that this bill has to add up to order and good government in industrial relationship, and there should be and must be a provision in there that all discharged employees, discharged unjustly, should also be reinstated, along with any compensation paid. It is necessary to the maintenance of the function and development of the Canadian labour movement.

By Mr. MacInnis:

Q. That provision for reinstatement is now made in most up-to-date agreements where a person is discharged for some misdemeanor, is it not?—A. That is true, sir; but I think it has to be considered that the law of averages presupposes that some employers will take the position that the law supersedes a collective agreement which in the final analysis is only a gentleman's agreement.

Q. I did not make the point as a reason why it should not be put in here; I made it as a reason why it should be here, because it is now a part of most of our up-to-date agreements: an employee is discharged and the discharge is made a matter for consideration between the company and the organization, and if the employee is found innocent of the reason for his discharge he is reinstated and the wages are paid?—A. That is quite true, and it is all the more reason for the reason stated before that it should be in the law; because some employers—I do not say all employers—might take the position that the collective agreement under which they were operating was signed under some degree of duress circumstances, and that sort of thing, and they might fall back on the law or the statutes to complement or supplement any existing agreement with that provision in it. It should be necessary to have it in the law as well.

Mr. MITCHELL: Do you think it is wise to write into the law all the customary provisions in a collective agreement? I have always been fearful of that and I have always argued that what the government gives they can take away. I offer no criticism of the present agreement legislation, but it is obvious in that legislation we have incorporated into law that which normally had its place in a voluntary collective agreement. That is the risk you run in all this legislation when you incorporate in the law what normally comes about in the process of a collective agreement: some government will come along and take away from you things you have enjoyed for generations in a trade or calling or an organization. There is always that danger.

The WITNESS: I will go part of the way with the honurable minister, but I do suggest that in this particular matter what is basically involved is the right to work, and whether we like it or not—whether our governments are the best form or the worst form is a matter of dispute—providing that is one of the features of our law—the basic right to work—when they are merely supplementing that the parties to a collective agreement have been in advance of the law itself. The law, I think, should supplement and follow directly.

The VICE-CHAIRMAN: Mr. Conroy, can you find in the Act any grievance procedure?

The WITNESS: No, not that I know of, sir, other than general provisions of recognizing unions and doing business through boards and all that sort of thing.

The VICE-CHAIRMAN: Section 26. What is your view on that, Mr. Conroy? Or have you any views on it?

The WITNESS: Oh, it is not of major importance, that I can see.

The VICE-CHAIRMAN: It is not? All right.

By Mr. MacInnis:

Q. Is not this the situation, that the employer who is interested in good relations between the employing company and the union prefers that all grievances be taken up through the union; that it relieves him of taking up grievances by individuals that, perhaps, would not be taken up at all if they had to go to the union?—A. I would say a wise employer who has dealt with the union for any length of time will want, not only for the sake of better relationship but of convenience as well—he will wish to channel all his grievances through the recognized bargaining agency. It is admitted, of course, that we have a number of employers who prefer the back door method of individual employees doing business over the head of the union. That is our objection to this particular clause. I believe that a strong union, which we had hoped would develop out of the National Labour Code—the majority of them—can take care of it. Nevertheless, we think the objection is sound, and that the bill can be improved along the lines we have suggested.

Hon. Mr. MITCHELL: Is it not a fundamental right of the individual to be able to go to his employer? If I get the force of your argument, sometimes a trade union can be a little difficult on its membership. Is it not fundamental that an individual is a free person to go to his employer? It seems to me that is elementary; and I am given to understand that that is embodied in some of the trade union agreements in this country.

The WITNESS: He would have that right, Mr. Minister, if there were a provision in the law. It all depends on whether this practice is being used or abused. No union that I am aware of has ever attempted to stop the individual employee from going to the employer; but I grant it has developed to a considerable extent that employers who wish to by-pass the union, to deprecate, to lower the prestige of the organization, choose the method of the individual employee doing business with the employer direct so that the union be completely by-passed in the practice and as a result we have a multiplicity of bargaining agents.

The VICE-CHAIRMAN: Let me get this across. Take a single employee who will go to an employer with a grievance though there is a bargaining agency in the shop. He may present his case badly, inadequately, and he may get a decision that may be binding on all of the employees in the shop. Is not that the case, or can that be the case?

The WITNESS: It is a possibility. It would not be from the standpoint of the unions recognizing such behind-the-door deal; but the employer could seize upon such a precedent to say that this is the record of discussions and decisions on a particular grievance; it has been done before and it should be done again. Yes, that is possible.

Mr. MACINNIS: Is not this the case? Trade unionism itself is based on the fact of bargaining for a group and that taking up a grievance is a part of the collective bargaining?

The WITNESS: I have also interpreted it that way and I suggest that most employers with good relationships interpret it the same way. I know that collective bargaining is a continuous process. It starts from the first day you sit down with the employer, complete the contract, and then carries on to the expiry of the contract through day-to-day negotiations and interpretations of that contract.

The VICE-CHAIRMAN: Are you satisfied that company unions are completely closed out under this Act?

The WITNESS: I do not think so, so long as you do not disestablish some unions that are not closed out.

The VICE-CHAIRMAN: You mean have authority to disestablish?

The WITNESS: Right.

The VICE-CHAIRMAN: Are there any further questions? I think Mr. Conroy's brief is pretty thorough and clear. I think that our present plans are to finish to-night and that would give the members an opportunity to digest the material and perhaps we will have the record ready. The minister is attempting to get that for us. It makes interesting reading. There being no further questions, Mr. Conroy, you are excused.

Mr. MacInnis: Before we go on, Mr. Chairman, there is a question I should like to ask the committee. I think it was Mr. Homuth who made the proposal the other day that persons who had presented briefs, either employers or employees, should wait here and that we consult with them in dealing with the sections of the bill. I do not think it would be either desirable or feasible to instruct them to sit here, but would there be any objection to any person or organization presenting a brief, sitting in and being asked for their opinion when we are dealing with the section?

The Vice-Chairman: Mr. MacInnis, that is not the wish of the committee as I understand it. I think there is no objection to them being here and listening to the argument which is quite open, but if we start digging out the various sections and asking what the Canadian Federation of Labour thinks of 2(*h*) or what somebody else thinks of 2 (*h*), we can forget about this bill for this year, and I do not think we want to do that. There is no objection to looking for guidance. Is Mr. Best here?

Mr. MacInnis: I am not pressing for it.

The Vice-Chairman: Mr. Best is not here so I shall have to read this brief into the record. It is a very short brief and I shall read it into the record.

DOMINION JOINT LEGISLATIVE COMMITTEE

RAILWAY TRANSPORTATION BROTHERHOODS

Ottawa, Ontario, July 2, 1947.

The Chairman,
Standing Committee on Industrial Relations,
House of Commons,
Ottawa, Ontario.

Re: Bill No. 338 Entitled "An Act to Provide for the Investigation, Conciliation and Settlement of Industrial Disputes".

Dear Sir:—Concerning the hearing being held before your committee on the above subject, the Dominion Joint Legislative Committee of the Railway Transportation Brotherhoods was favoured with a copy of the draft bill on which this measure was based. We were also accorded the privilege of reviewing same in conference with officers of the Department of Labour. As a result, some anomalies and objectionable features were found therein, but appear to have been corrected in bill 338 now before you.

Appreciating the desirability of avoiding unnecessary delay and repetition, we shall not attempt a detailed analysis of the bill. We desire, however, to mention three phases of it which have been subjects of representations by others at this hearing, namely:

Prohibition of Barristers. We believe that an intimate knowledge of the work or service out of which a dispute arises is the best qualification for members of a board of conciliation, in order to ensure an equitable and speedy settlement of such disputes.

Enforcement. We believe that the board charged with the administration, investigation and the reaching of decisions should also be clothed with authority and responsibility for enforcement of the provisions of the Act.

Scope of Coverage. We fully appreciate the desirability of uniformity of legislation to deal with this subject on a national basis, but also recognize the constitutional limitations of parliament's legislative competence on the subject. We strongly urge, however, that the principles of this bill be extended to include within its scope workers of all classes to the limit of that competence where numbers and employment conditions made it practical to do so. The procedure necessary to effect such extended coverage can safely be left to your committee and parliament, but we respectfully urge that such action be not delayed.

Our committee desires to record approval of the general principles of bill 338. We believe, if enacted, it will provide a procedure in dealing with industrial relations that can be accepted with confidence. We are willing to appear before your committee, if desired, but could only re-affirm the suggestions expressed herein.

Respectfully submitted,

WM. L. BEST,
Secretary

A. J. KELLY,
Chairman.

Dominion Joint Legislative Committee.

710 Hope Chambers,
63 Sparks Street,
Ottawa, Ontario.

18 Rideau Street,
Ottawa, Ontario.

For which we thank them.

Now, we have a brief here from the Railway Association of Canada, and Mr. A. B. Rosevear, K.C., assistant general solicitor, C.N.R., is here representing the Railway Association of Canada.

Mr. HOMUTH: Are you going to take the two together?

The VICE-CHAIRMAN: They have considerable in common.

Mr. HOMUTH: I was going to say that there is no one here representing—

The VICE-CHAIRMAN: The Legislative Committee? They are not anxious to come up unless we want them to come up.

A. B. Rosevear, K.C., called:

The WITNESS: Mr. Chairman and gentlemen, I am here representing the Railway Association of Canada. As you know the Railway Association has as its members practically all the railways of Canada including the Ontario Northern, the Algoma Central, the Pacific Great Eastern, and the two major railways, the Canadian Pacific and the Canadian National.

May I be permitted, Mr. Chairman, before reading the brief to make a few very short remarks. I wish to say, first, that it is the desire of the railways of Canada to make what we believe to be constructive suggestions respecting bill 338. Collective bargaining, as you are aware, has been in force on the railways for approximately two generations. Therefore, with all becoming modesty, we think we know a little about it. We hope, therefore, that the committee will realize that any suggestions we have to make are composed of the experience which we have gathered over the years.

Secondly, we wish to point out to the committee something for which the railways have reason to be proud; namely, that for many years we have had very good employer-employee relations. We have learned that the most efficient and least expensive method of dealing with labour relations is to sit around a table and discuss them. During these years we have, by experience, developed men both in the labour organizations and in the railways who have had long years of experience on the railroad. Therefore, they know a great deal about the problems which are under discussion. Also, this has brought about mutual respect, the one for the other.

The only other think I wish to say is that, in dealing with labour relations we feel sure a committee of parliament will bear the fundamental point in mind that what is desired, is stability in labour relations, and this should be the principal aim of any such legislation; but we would expect that any legislation which is now adopted by parliament would be constructive and of assistance in furthering the harmony which already exists in railway labour relations.

Now, with respect to reading the brief, Mr. Chairman, I think the best thing I can do is just go ahead and read it.

The VICE-CHAIRMAN: All right.

The WITNESS: Mr. Chairman and gentlemen: pursuant to the request of the chairman of the Industrial Relations Committee, this brief is being submitted on behalf of The Railway Association of Canada. We wish to submit the following with respect to certain sections of bill 338.

Section 2 (1) (i)—Definition of "employee"

> "employee" means a person employed to do skilled or unskilled manual, clerical or technical work, but does not include
>
> (i) a manager or superintendent, or any other person who, in the opinion of the board, exercises management functions or is employed in a confidential capacity in matters relating to labour relations;
>
> (ii) a member of the medical, dental, architectural or legal profession qualified to practise under the laws of a province and employed in that capacity;

This definition is entirely new. The railways are strongly of the opinion that the regulations in this respect should be made clear and definite and should not be couched in language capable of being construed as intended to include persons who exercise supervisory functions involving duties and responsibilities resting on many such employees classified as chief clerks and foremen employed in various branches of railway service, the inclusion of whom in a bargaining unit would not be conducive to efficiency. Moreover, the inclusion of such individuals in a collective bargaining unit whether or not they so desire to be included would take away from such individuals the democratic rights which we understand the regulations are, in principle, designed to protect. There are also employees employed in a confidential capacity in matters other than those relating to labour relations whose inclusion in a bargaining unit would be most undesirable.

The definition of "employee" in bill 338 by reason of its vagueness is capable of various interpretations.

The following amendment is suggested to section 2 (1) (i) so that the subsection as amended would read:

> (i) a manager or superintendent, or supervisor, or any other person who, in the opinion of the of the board, exercises management functions or is employed in a confidential capacity.

Section 3, subsections (1) and (2)

It is noted that the word "lawful" has been omitted from both of these subsections. This word is included in a similar provision of P.C. 1003 (section 4, subsections (1) and (2). There appears to be no reason for the omission of this word in bill 338 and there is much to commend its inclusion.

Section 6 (1)

Section 4 (3) clearly sets out the intent that no coercion or intimidation of any kind shall be used to counsel or influence an employee to become or refrain from becoming or cease to be a member of a trade union. However, this intent is in effect nullified and the freedom from coercion and intimidation assured to an employee is destroyed by the provision of section 6 (1). It is apparent that if an employer and an employee organization agree upon a "closed" or a "union" shop the democratic right of a workman, who does not wish, for reasons of principle, to be a member of a trade union, to choose his work would be taken away.

Section 6 (2)

Incidentally, it would appear that section 6 (1) renders the provisions of section 6 (2) meaningless.

Section 8

This section provides no means whereby a group of technical employees, not desiring to be included in the scope of a bargaining unit, may withdraw themselves other than by forming a trade union and obtaining certification. In effect, they are coerced into an organization whether they desire this or not. There should be a provision for such technical employees forming a unit appropriate for collective bargaining withdrawing from any larger unit if a majority of them so desire without compelling them to seek certification of bargaining agents whether they so desire or not.

Section 11

This section provides that in the event of any question arising as to whether a bargaining agent any "longer represents a majority of employees in the unit for which it is certified," the board will determine same, but no procedure is set forth for the purpose of getting such questions before the board. This difficulty could be rectified by the insertion after the word "board" in the first line of the section the words "upon the application of any party to a collective agreement".

Section 20 (2)

It is always good business practice to make provisions in all contracts definite so that the subject matter may be considered closed for a definite period of time. The acceptance of that principle is fully recognized and, indeed, emphasized in subsection 1 of section 1. This has been the practice on the railways for many years and has been of mutual benefit.

It would seem fitting that some consideration should be given in this bill to employees who are not included in a bargaining unit. This could be done very readily by including in the bill a provision to the effect that their rates of pay and hours of service could not be adversely affected without them being given reasonable notice. A provision to this effect could be appropriately inserted immediately following section 20.

THE RAILWAY ASSOCIATION
OF CANADA

J. A. Brass,
General Secretary

June 30, 1947.

The VICE-CHAIRMAN: Now, gentlemen, if there are any questions.

By Hon. Mr. Mitchell:

Q. I would like to ask a couple of questions. You say, employees classified as chief clerks and foremen employed in various branches of railway service. What I am thinking of at the moment is this, you take section foremen, they all belong to the Brotherhood of Maintenance of Way; surely you would not ignore them?—A. It was not our intention, Mr. Mitchell, to exclude anybody who is already the member of a union.

Q. Take the conductor on a train, he is to all intents and purposes in a supervisory position and he is in fact in charge of the train; how about him, the conductors have been organized for the last fifty years?—A. Well, I realize that, but I think our definition was at least one definition. What I had in mind was the supervisory employees, the employees who have the right and responsibility of supervising or giving direction. Now, with respect to that kind of employment, the conductor of a train is not that.

Q. Some people think he is; he would probably think he is, too.—A. I mean, I do not believe that our definition is perfect, but I would like to see a better definition in the Act than the one that is there now. I think it is rather dangerous the way it is now. It is wide open and it lends itself to the possibility of abuse.

Q. I get your contradiction there, I understand that; what appears to you to be a contradiction in section 6; and you say definitely that you are opposed to any principle of a closed or union shop.

The VICE-CHAIRMAN: He does not say he is opposed to a closed or union shop.

The WITNESS: No, I don't say that.

The VICE-CHAIRMAN: I was reading the same thing and I was going to question him on it, but you go ahead.

Hon. Mr. MITCHELL: My point is this, it is the same point that I made to Mr. Conroy. What you are saying is that you think this legislation should take the place of a collective agreement but you would not set it up as a normal basis of employment and understanding between trade unions under the basic law of the country. Now, my point is this; take the building trade, I do not know what would happen to the building trade of this country if you tried to break up the years and years of experience with the union shop in some cases and with the closed shop in others; if you are going to try to govern that by law.

Mr. MAYBANK: We are having difficulty in hearing you here.

Hon. Mr. MITCHELL: I say, I go back to the point I made with Mr. Conroy, that I question the wisdom of putting in the basic law of the country, in legislating on things which are normally part of the free collective bargaining rights of the employer and employees. Take the case of the building trades where they have a union or closed shop, if the employers want it, the employees want it. That has worked out very satisfactorily. I question whether the government should step in and say that you cannot carry on things that way any longer.

The WITNESS: Perhaps the brief does not make this point clear. My point is this—I may be wrong and I am subject to correction—I cannot find anything in the Act itself prohibiting a closed or union shop. I can find nothing in the Act which prohibits that, therefore the object of section 6(1) is neutralized because it can make a union agreement without breaking the Act as it stands, an agreement for a closed shop or a union shop. We could make one without breaking any of the provisions of this Act at all, so why should we put this in to prohibit something that is not prohibited?

Hon. Mr. MITCHELL: Is it not a fact that there is a body of opinion which thinks a union shop or even a check-off is a measure of coercion?

The WITNESS: I suggest that that would be a legal question. I feel that in subsection (2) of section 6 it is intended that there cannot be any coercion. I think that would violate all principles of law.

The VICE-CHAIRMAN: That is where I cannot follow your argument at all. I cannot follow your brief in the light of your comment.

Mr. MACINNIS: Are you referring to page 3, section 6?

The VICE-CHAIRMAN: Yes, to section 6(1). Apparently Mr. Mitchell is of the same view that I am. In this section you say:

> However, this intent is in effect nullified and the freedom from coercion and intimidation assured to an employee is destroyed by the provision of section 6(1). It is apparent that if an employer and an employee organization agree upon a 'closed' or a 'union' shop the democratic right of a workman, who does not wish, for reasons of principle, to be a member of a trade union, to choose his work would be taken away.

Mr. MACINNIS: Is there not some contradiction in what appears in the brief and what he is stating now? In the last half of that paragraph on page 3 which deals with section 6, you refer to the democratic right of a workman being taken away?

The WITNESS: What I am saying here is, let me put it this way; the best thing is to put nothing in the Act which adds nothing to the Act at all. Why put in the Act a clause which says that something is permitted which is already permitted?

Mr. MACINNIS: You mean it will interfere with the democratic right of the individual?

The WITNESS: You see what I mean.

By Mr. Maybank:

Q. You do not want legislation which merely draws attention to a fact?—A. Yes, that is right.

Q. It might not be good legislation but there is just an objection to it from the point of a person who is going to be prejudiced?—A. No. It is a poor principle to put into an Act something which neither adds to it nor takes anything away.

Q. Then it is a mere question of draftsmanship. As to whether it is poor or not has nothing to do with the parties and persons who are going to be affected by it; is that right?—A. Well, it is simply—I would not like to use harsh words about the section itself, but I think perhaps what I said a moment ago would do; that it is a sort of left-handed attempt to insert something into the Act which is supposed to mean something and might not mean that thing at all.

Q. If it does not mean anything at all then it does not hurt any employee?—A. That is right.

Q. And it does not help him either; and it still may not be objectionable from the point of view of the employer. You are arguing against it from the standpoint of legislative draftsmanship.—A. I would agree to that; but I would not say that that is the correct interpretation of it, that is merely our interpretation.

Hon. Mr. MITCHELL: That section has been there for some time, the freedom of a union shop or a closed shop where there is agreement between the employer and the employee.

The WITNESS: I am merely asking whether that could not be done another way.

Hon. Mr. MITCHELL: Let us go back to section 4(3) providing that there should be no coercion nor intimidation of any kind, etc.

The VICE-CHAIRMAN: Actually, this I think bears out Mr. Conroy's suggestion to Mr. MacInnis which he brought to the attention of the committee.

He said that there were more things included in a collective agreement than just wages and hours of work. There are other things that are not included in that section whereas here we first make a statement and then we say, this is not intended to cover this and this condition.

By Mr. MacInnis:

Q. Might I ask a question of Mr. Rosevear? That statement in his brief on page 3 relating to the closed shop and the union shop—taking away the democratic right of a workman of choosing whether he wishes to be a member of a union or not—would you agree, Mr. Rosevear, that the workers because of their organization got better wages and better working conditions?—A. Well, I think that the history of trade unionism has been to that effect. I am not arguing against it, but I do simply argue that a citizen should be permitted to work where he wishes to work. I think that is however, a matter of prinicple on which we could never agree.

Q. I think I am a logical person and I want to try and get the logic of this. Is not every individual in every community compelled to do things because the doing of those things are good for the community? For instance, I have no children, but yet in my municipal taxes I must contribute to the school tax, because the community considers schools are a good thing. I must do my share to support them whether I am opposed to them or whether I have any children to take advantage of the schools. Is not this a similar condition? An organization provides better wages, and working conditions, and the individual who accepts those better wages and working conditions, but does not belong to the organization, is taking something for which he will not pay.—A. Supposing he belongs to another organization—that is the catch in the thing.

Q. Well, it does not apply then. If you insist that he must belong to some organization and pay his share it is all right with me.—A. May I be permitted to say that I do not think I should get into a discussion of this sort.

The VICE-CHAIRMAN: No, I think it would be very well to avoid it. In any event, you would probably finish second best with Mr. MacInnis, and you had better stay out of it. Besides, his position is one which is a little difficult at the moment.

Now is there any further questioning on the brief?

Mr. ARCHIBALD: One thing I would like to get straight is in connection with the B. and B. gangs.

The VICE-CHAIRMAN: What was that?

Mr. ARCHIBALD: Bridge gangs.

By Mr. Archibald:

Q. It is in connection with the B. and B. gangs working in British Columbia. They are under the railroad but yet they are not subject to the British Columbia hours of work, the forty-four hour week. What is there in this bill that would give these workers the protection of the high standards enjoyed generally by the people of British Columbia? I have not found anything in the Act to cover that and I would like to see a minimum or maximum established in some way, shape, or form, so these people could get the benefits they are entitled to as citizens of British Columbia. I have had these complaints come in from the railroad workers.—A. Well, Mr. Chairman, I do not know whether I should answer that except to say this. It is very desirable to the railway, in fact it is essential, that we should have uniform conditions of labour, employment, and wages throughout Canada. We feel in that connection that the labour relations of the railway should be a matter of federal concern. We feel that most strongly, and it seems to me I should make the point quite clear to the committee that the railways in Canada have had harmonious labour relations with employees for many, many years. We have bargained collectively with our organizations, including maintenance of way, and it is our wish to establish the same wages in one part of the country as in the others, and that the parliament of Canada should deal with labour relations on the railway, rather than provincial legislatures. By doing that we will continue to have efficient and harmonious labour relations on the railways in Canada; otherwise we would have nothing but chaos.

Mr. MacInnis: In other words you would say a railway worker in British Columbia is not a citizen of the province of British Columbia to the extent that he could take advantage of—

The Vice-Chairman: Old age pensions?

Mr. MacInnis: No, the hours of work; the labour legislation that the province may possess.

Hon. Mr. Mitchell: May I say that this session has approved of that principle.

The Vice-Chairman: Of course, and we all approve of it in the main.

Mr. Homuth: That has nothing to do with the bill.

The Vice-Chairman: No.

Mr. Homuth: Out of curiosity I would like to ask when the last railway strike in Canada occurred?

The Witness: The last official strike was, I think, in 1910 or 1911.

Hon. Mr. Mitchell: Yes, 1910 or 1911.

The Witness: It was the Grand Trunk strike.

Mr. Maybank: The Grand Trunk strike was in 1908.

Mr. Homuth: Yes, I thought 1908 was the last.

Mr. Maybank: There have been other strikes.

Mr. Homuth: I meant a general strike.

Mr. Maybank: There were craft strikes in 1916, quite legal strikes, but they were just craft strikes.

The Witness: Might I say that one of our senior vice-presidents was asked a question the other day respecting strikes. He has had many years service on the railway but he has never experienced a strike. He has been in all positions, from superintendent up, and he said he had never experienced a strike.

Mr. MacInnis: Do you think if all other workers enjoyed the same conditions as those enjoyed by workers on the railroad that we would have very few strikes?

The Witness: Well—

Mr. Homuth: How do you feel about the exclusion of lawyers?

The Witness: Is that a personal question?

The Vice-Chairman: We will attend to that in committee at the proper time.

Now, gentlemen, it is 6 o'clock, and we have two briefs and bill 24 to deal with to-night. If we are here promptly at 8 o'clock I think we can finish to the point where we can lay out our work for dealing with the bill.

The meeting adjourned at 6.00 p.m. to meet again this evening at 8.00 p.m.

EVENING SESSION

The committee resumed at 8.00 p.m.

The VICE-CHAIRMAN: Gentlemen, the first brief is that of the Canadian Brotherhood of Railway Employees. Mr. Mosher will be presenting the brief. Will you come forward please, Mr. Mosher?

A. R. Mosher, National President, Canadian Brotherhood of Railway Employees, called:

The WITNESS: Mr. Chairman and members of the committee:

The Canadian Brotherhood of Railway Employees and Other Transport Workers is pleased to have this opportunity of appearing before the parliamentary committee on industrial relations to make its submission with respect to Bill No. 338 which is presently under consideration. The Brotherhood makes its submission with the earnest and sincere desire that its suggestions may assist the committee in framing legislation which will bring to the Canadian industral scene a high degree of industrial peace. The suggestions herein contained are made objectively and in the light of past experience.

As the largest Railway and Transport Workers' union in Canada, we have a vital interest in the type of labour relations legislation which parliament will pass. Our principal contention has always been that the parliament of Canada should assume exclusive jurisdiction in the field of labour legislation. We feel that Bill No. 338 is a "National" Labour Code in name only. The arguments in favour of truly national legislation in labour matters have already been urged upon this committee. If we are ever to have any uniformity of labour legislation in Canada, we believe that the dominion government will have to assume jurisdiction.

Our Brotherhood deals mainly with employers who are engaged in national industries which are basic to the country's economy. However, the different types of labour legislation which the provinces have introduced have only served to confuse the situation from the standpoint of both employers and employees. By way of illustration, the Brotherhood has collective agreements with a number of C.P.R. and C.N.R. hotels. The provinces of British Columbia and Saskatchewan have recently introduced legislation which provides for a standard workweek of forty-four hours. Both provinces seek to make their legislation applicable to railway hotels. The employees of the Empress hotel in Victoria, the Hotel Vancouver in Vancouver, and the Hotel Saskatchewan in Regina are in different position from their fellow employees in other hotels operated by the same employers; as between the Saskatchewan and British Columbia employees, the Regina employees are in a more favourable position than their fellow workers in British Columbia due to the fact that the Saskatchewan legislation provides for maintenance of take-home pay coincident with the reduced workweek. Both pieces of legislation, which are similar in import, have been referred to the courts of the respective provinces on the question of constitutionality, and the results have not helped the situation. The Saskatchewan courts have held it to be ultra vires; the British Columbia courts, intra vires. All this needless confusion could be avoided by placing the jurisdiction in these matters under the dominion government. It is to be hoped that parliament will recognize its national responsibility and act accordingly by making the necessary constitutional amendments.

With respect to the bill, the following comments are made:

Section 2 (1) (b): The certification of trade unions instead of individuals is a salutary feature and will work out satisfactorily.

Section 2 (d): The definition of "Collective Agreement" is too narrow. The definition should be broadened so as to include such matters as check-off and union security. The definition should be realistic as there will undoubtedly be some disputes where these matters will be issues.

Section 2 (1) (h): The definitions of "Dispute" or "Industrial Dispute" should be similarly broadened to include the subjects of check-off and union security.

Section 2 (1) (i): The definition of "employee", while it is an improvement over the definition in P.C. 1003, appears to be designed to exclude foremen as "managers" or "superintendents". There is no logical reason for such an exclusion. There is an interesting and important background to this issue. The only jurisprudence on the subject is based on American cases. The point was first brought into question in the United States in 1941 in the Maryland Drydock Case. In that case, the chairman of the U.S. National Labour Relations Board was of the opinion that foremen should be entitled to bargain collectively. However, he was out-voted by the other two members of the board and foremen were denied the rights of collective bargaining. Two years later, the same question came before the New York State Labour Relations Board. That board refused to follow the decision of the national board in the Maryland Drydock Case.

Re Metropolitan Life Insurance Company and Apartment House Superintendents and Resident Managers Local Union No. 219, Building Service Employees' International Union AFL (1943) 6 N.Y.S.L.R.B. page 751. In the course of its decision, the board said:

> Granting superintendents the opportunity to bring their cases before the board offers them and their employers peaceful machinery to determine controversies between them . . . Denying superintendents the facilities of the board's certification process would merely invite the use of the economic weapons which the Act is supposed to discourage. Assuming the matter to be within our discretion, it would hardly appear wise to exercise it in that direction.

By depriving foremen of the conciliation machinery in the new bill they would be forced, in the event of a dispute, to resort to the strike. This would be fallacious reasoning indeed.

In 1945, the U.S. National Labour Relations Board finally reversed its decision in the Maryland Drydock Case and held that foremen are entitled to certification and to the privilege of collective bargaining. *Re* Packard Motor Car Company and Foremen's Association of America, 1945, 61 N.L.R.B. page 4: In a challenging judgment, the majority declared:

> . . . Since the decision in the Maryland Drydock Case, we have observed with concern the important developments in the field of foreman organization. . . . which, we believe, require a consideration of the entire problem.
>
> At the outset it is necessary to describe the nature of the employee-group involved here; for no proper understanding of the problems of these foremen can be had unless their role in modern mass production industry is understood. As to this, there is widespread misconception. We do not have to-day in mass production industry, such as Packard, the kind of

supervisors with which we were familiar, in the 1900's. In those days the foremen were often independent contractors, operating under the loosest kind of production schedule and having plenary authority with respect to such matters as hire, rates of pay, promotion, demotion, transfer, discipline and discharge of employees under their supervision. This was true even in those plants where the foremen were not independent contractors. In their dealing with individual subordinate employees, foremen had the power to make decisions and take action, without the necessity of securing the approval of their supervisors. In sum, within his own sphere, a foreman was master of his department. To-day the picture is fundamentally different. Vast aggregations of capital, the presence of thousands of employees under one roof, the introduction of special purpose machinery and tools, extreme specialization and integration of departments, and the development of "scientific management" in general—all have combined to reduce the skilled to the semi-skilled and the semi-skilled to the unskilled; and all this in turn has made the supervisor more the "traffic cop" of industry than the independent foreman of the 1900's . . . The very nature of modern mass production industry requires that the supervisors be constantly subjected to rigid controls and checks from above, for it is essential that there be extremely close co-ordination of production among hundreds of departments . . . in order to meet increasingly exacting standards. This means that the supervisor not only must follow policy which higher management has established, but that in the very carrying out of that policy, he is required to adhere to fixed patterns and procedures also set by higher management. Thus, he is given ready made policies to execute and he is also given standard practice to observe in executing them. Nor have these been the only changes in the foreman's status. The expansion of mass production industry has created a variety of service departments, all of which have worked fundamental changes in the authority and duties of foremen. Thus at Packard—a typical mass-production plant—the employment department does the hiring; the layout department lay out the machinery, tools and equipment; the scheduling department schedules the work; the routing department routes the work; the stock or traffic department moves it; the time-study department sets the rates; the inspection department checks the quality; if anything goes wrong, the master mechanic comes in and corrects it; the personnel department handles the grievances of subordinate employees beyond the first stage and retains ultimate control in any event, and other departments handle numerous other employee services.

. . . As the Foremen's Panel of the National War Labour Board has aptly described the situation, "Whereas he was formerly an executive with considerable freedom of action, he is now an executor carrying out orders, plans, and policies determined above;" he is "more managed than managing, more and more an executor of other men's decisions and less and less a maker of decisions himself".

With this picture of the foreman in modern mass industry in mind, his asserted need for collective bargaining becomes more meaningful and the incredibly rapid growth of his organization wholly understandable.

The result has been that supervisory employees have resorted to the only remaining weapon at their disposal to secure recognition—a test of economic strength through strikes and threats of strike. Thus, after the decision in the Maryland Drydock case and from July 1, 1943 through November, 1944, there were twenty strikes of supervisory employees; 131,000 employees were involved, and 669,156 man-days of work were lost as a result . . . . We cannot shut our eyes to these developments since the decision in the Maryland Drydock case . . . .

In a second case, involving the same parties, the U.S.N.L.R.B. reaffirmed its decision in the first Packard case although the board was differently constituted. Re Packard Motor Car Company and Foremen's Association of America, 1945, 64, N.L.R.B., page 1212: The chairman, in a concurring judgment, said in part:

> The company asserts that its supervisory employees are not "employees" at all, but "employers". To the extent that foremen sometimes speak for or bind a respondent in dealing with their subordinates, because then "acting in the interest of an employer", they are "employers" within the meaning of the Act. Here, however, we are not concerned with foremen's relations with their subordinates, but with their own status vis-a-vis the company that hires, discharges and compensates them and that directs their work. In that relation the company is the employer and the foreman the employee; when they sit on opposite sides of the bargaining table, their interests are momentarily adverse. This is true whether they bargain individually or collectively. The foreman is not "acting in the interest of an employer" when he seeks to improve his own working conditions; he is acting for himself. The company suggests that the same man cannot, in logic, be both employer and employee. But "the life of the law has not been logic; it has been experience". High judicial authority has held that a foreman can be both employer and employee . . . the facts of industrial life have made him both . . . .

It is interesting to note that recently the Ontario Labour Relations Board held that foremen and supervisory employees are entitled to be regarded as employees for the purposes of P.C. 1003.

Since the Ontario board's decision, the second Packard Motor Car Company case was heard and decided by the United States Supreme Court. The U.S. Supreme Court upheld the decision of the N.L.R.B. and extracts of the decision are quoted herewith:

> Even those who act for the employer in some matters, including the service of standing between management and manual labour, still have interests of their own as employees. Though the foreman is the faithful representative of the employer in maintaining a production schedule, his interest properly may be adverse to that of the employer when it comes to fixing his own wages, hours, seniority rights or working conditions. He does not lose his right to serve himself in these respects because he serves his master in others. And we see no basis in this Act whatever for holding that foremen are forbidden the protection of the Act when they take collective action to protect their collective interests.
>
> The company's argument is really addressed to the undesirability of permitting foremen to organize. It wants selfless representatives of its interest. It fears that if foremen combine to bargain advantages for themselves, they will sometimes be governed by interests of their own or of their fellow foremen, rather than by the company's interest. There is nothing new in this argument. It is rooted in the misconception that because the employer has the right to wholehearted loyalty in the performance of the contract of employment, the employee does not have the right to protect his independent and adverse interest in the terms of the contract itself and the conditions of work.
>
> There is clearly substantial evidence in support of the determination that foremen are an appropriate unit by themselves and there is equal evidence that, while the foremen included in this unit have different degrees of responsibility and work at different levels of authority, they

have such a common relationship to the enterprise and to other levels of workmen that inclusion of all such grades of foremen in a single unit is appropriate.

There are sufficient cogent arguments in the above to justify the inclusion of foremen and supervisory employees in Bill No. 338, unless they are employed in positions where they are entrusted with confidential information concerning an employer's labour relations policy.

It is suggested, therefore, that "employee" should be defined as follows:

> (i) "employee" means a person employed to do skilled or unskilled manual, clerical or technical work, but does not include.
>
> (1) a person who, in the opinion of the board, is entrusted with confidential information concerning his employer's policies or practices respecting the relations between the employer and his employees;
>
> (2) a member of the medical, dental, architectural or legal profession qualified to practice under the laws of a province and employed in that capacity.

Section 2 (1) (r): There should be added the following to the definition of "trade union";

> . . . but shall not include any association, committee or group of employees or any other entity purporting to bargain collectively on behalf of any employees whose formation, organization, administration or policy is being aided, influenced, coerced or controlled by an employer or by an agent of an employer.

Company unions should be unequivocally outlawed, in clear and unmistakable terms.

Section 3: Rights of Employees and Employers:

The following section should be added as Section 3 (A):

> 3 (A): The parties to a collective agreement may insert in the collective agreement a provision requiring, as a condition of employment, membership in a specified trade union, or granting a preference of employment to members of a specified trade union.

The right to a union shop or closed shop should appear as a matter of principle under the heading of "Rights of Employees and Employers", and not as a concession under sufferance as in Section 6 (1).

Section 4 (2): In line 4, insert after "no employer" the following:

> . . . or employer's organization and no person acting on behalf of an employer or employer's organization. . . .

Section 6 (1): If one agrees with the suggestion concerning the addition of Section 3 (A), then section 6 (1) should be deleted.

Section 8 provides that upon proof of the existence of a craft unit and majority membership therein, the unit "shall be entitled" to certification. In this respect, this section continues the objectionable provision of section 5(4) of P.C. 1003; in fact, it is more specific than before in that it ensures automatic certification if majority membership in a craft unit can be proven. This can only lead to instability in labour relations. Many establishments are represented, for collective bargaining purposes, by industrial unions. This section can be the cause of much inter-union rivalry in the future. The Labour Relations Board is divested of any discretionary power. In my opinion, the National

Board laid down proper jurisprudence in the case of David Spencer Limited, Victoria and B. C. Retail Meat Employees' Federal Union, Local 222. In that case the board considered whether it would be in the interests of the employees or the employer or in the public interest to establish a multiplicity of bargaining units within one establishment of an employer for the purpose of compulsory collective bargaining. Having regard for the three interests involved (employee, employer and the public), the board denied certification.

However, the board has found it impossible to give proper effect to these three important interests. By reason of the language of P.C. 1003, the board has felt constrained to give automatic certification to craft units if they show majority following, I, myself, have subscribed to this course of action as the Board is only a tribunal which administers a written law.

Pursuant to P.C. 1003, certifications have been granted to craft units which, I am afraid, will have disrupting influences. In one case, the language of P.C. 1003 obliged me to agree to carving out 22 employees from a previously certified unit of 2,800 employees. This was done in spite of the plea of the employer that separate certifications would lead ultimately to as many as 40 bargaining units within the same plant. Quite obviously neither the interests of the employees, the employer nor the public were considered there. My argument is certainly not with the Board as I agreed with the decision. My argument is, however, that the law should be so framed as to allow for these considerations by the Board. In my opinion, the legislation should be so framed as to leave a discretionary power with the board which should have due regard for the interests of employee, employer and the public and should deal with each case according to its merits. The present trend, as evidenced by section 8 can only lead to multiplicity of bargaining agents and to inter-jurisdictional disputes which would militate against the interests of employees, employers and the public.

Section 9(5): This is the section which, presumably, would outlaw company unions. The wording of the section should be tightened up considerably. Firstly, in line 40, the word "formation" should be inserted before the word "administration" so that if it is proven that an employer has dominated or influenced the formation of a trade union, it should not be certified as a bargaining agent. Secondly, if it can be proven that an employer's organization has in any way influenced or dominated the union, then the union should be regarded as a company union. Thirdly, the following words should be deleted from the subsection: "So that its fitness to represent employees for the purpose of collective bargaining is impaired." Under section 9(5) (*a*), it would be necessary to show not only that the union is influenced by the employer but also that such influence has impaired the union's fitness to represent the employees for the purpose of collective bargaining. It is difficult enough, in most cases, to prove the first point. Proving the second point may present insurmountable difficulties. Once influenced by an employer in the formation, administration, management or policy of a union has been proven, the board should hold that trade union to be a company union and disentitled to certification. I would suggest therefore that section 9(5) read as follows:

> 5: Notwithstanding anything in this Act, no trade union, the formation, administration, management or policy of which is, in the opinion of the board, influenced or dominated by an employer or employer's organization, shall be certified as a bargaining agent of employees—

Section 11: In its present form, it is permissible for an employer to apply for decertification. In the hands of certain employers this weapon could be used to harass certified bargaining agents continually by endless litigation before the board. This section is fraught with dangerous possibilities. The brotherhood objects strenuously to this section but says that, at the very least, the section should enable only a group of employees to apply for de-certification. If, therefore, this section is retained, it is suggested that the following proviso be added to section 11:—

> Provided that an application for revocation hereunder shall be made only by or or behalf of employees in the unit.

Section 14 (*a*): In line 24, I would suggest that there be inserted after the word 'collectively', "in good faith."

Section 24: We believe that, in drafting this section, the department has overlooked the fact that a number of important labour organizations have not obtained formal certification although they have completed collective agreements and same are recognized by all concerned. To compel them to apply for certification would impose a needless burden upon the organizations and the board. At the same time, they should not be placed in less advantageous positions because they have not obtained formal certification. Consequently, it is suggested that this section read as follows:

> A trade union that is not entitled to bargain collectively under this Act or which has not entered into a collective agreement on behalf of a unit of employees shall not declare or authorize a strike of employees in that unit.

Sections 28 to 37—Conciliation Boards: While providing for the machinery of conciliation in the event of a dispute, every attempt should be made to make the conciliation process more meaningful. Actually, the appointees to a conciliation board have a tremendous responsibility. They must "endeavour to bring about agreement between the parties in relation to the matters referred to it" (section 32). Unfortunately, however, it has not worked out very well in practice. Too often, the members who have been recommended by the opposing parties are committed too strongly to the points of view of those who have appointed them. Although there are instances where conciliation boards have succeeded in making exemplary settlements of industrial disputes, there are too many cases where a reading of the reports indicates only too clearly that the members of the board entered the conciliation proceedings with preconceived ideas concerning the merits of the case and where it was a foregone conclusion that they would not agree. In my view this has two very harmful effects. In the first place, it jeopardizes the possibilities of ultimate settlement of the particular dispute and, in the second place, it undermines the general confidence of both management and labour in the usefulness of the institution of the conciliation board. It is not too drastic to say that the institution, as practised to-day, does not have the full confidence of management or labour.

Specifically, the brotherhood suggests the appointment of three standing panels representing management, labour and government. The members of the management and labour panels would be men and women chosen by representative organizations of the respective points of view. The government or chairman's panel would be chosen by the Department of Labour. The members of the panels should be chosen for their integrity, capacity, intellectual and otherwise, and for their experience in the field of industrial relations. In order to attract a high calibre of men, the government should pay a more generous allowance than is the case to-day. The bill provides for an allowance to members of boards of $25 per day. This is clearly inadequate. The additional capital investment would, I believe, yield a good return. Where parties to a dispute are to refer their case to a conciliation board, each party would choose its representative from among the members of the panels and the chairman would be selected from the government panel.

The advantages of such a procedure would be three-fold. First, the members of a conciliation board, not being appointed to deal with a specific dispute, would adopt a more impersonal and, therefore, a more objective approach to the issues involved, thereby enhancing the possibilities of settlement. The parties appearing before such a board would be inclined to regard it as a quasi-judicial body and a greater degree of respect for their decisions would ensue. Second, a body of expert conciliators will thus be established in Canada, which is sadly lacking at the present time. Finally, and not the least important of these considerations, a body of case law—labour jurisprudence—will be developed, not on a hit and miss basis, but in an orderly and long-range manner; the jurisprudence will be fashioned by a group of responsible conciliators. Their actions would be tempered by the realization that they were establishing jurisprudence. The development of this jurisprudence will indicate changing trends and would be of invaluable assistance to all interested parties in formulating their policies.

Sections 39 to 46: These are the "enforcement" provisions of the Act. Provision is made for punishment of offences by "summary conviction", thereby giving jurisdiction in these matters to police magistrates and to justices of the peace. It is submitted that the police court is not the proper forum for the disposition of matters involving industrial relations. A much more intelligent and broader approach to the issues will be available if these matters are heard by the labour relations board. The board should be given the responsibility for determination of offences under the Act. The informal atmosphere before the board, which contains equal representation of management and labour, would be much more conducive to a fuller understanding of the nature of the offences than that of a police court. It is suggested that, whether viewed from the standpoint of management or labour, it would be much more sensible to have the board deal with offences rather than have vindictiveness set in between groups of employers and employees as a result of convictions by police courts. The police court is simply not the proper place to dispose of such far-reaching issues.

Section 40: This section provides for repayment of back wages in the event that an employee is improperly suspended, transferred, laid off or discharged. There is no provision, however, for reinstatement of the employee. The section should make provision for reinstatement without prejudice to the employee, otherwise an employer could discharge the union officials in his plant and expiate his crime by paying a fine and back wages.

Sections 41 and 45: The Brotherhood takes strong objection to these sections which have the effect of making a trade union "a person" for the purpose of its being prosecuted. Once this principle is established by legislation, the next steps will be to make trade unions sueable in civil actions. The principle herein contained strikes at the fundamental concept of trade unionism, namely that it is a voluntary association of workers to which there should not be attached the same degree of liability as in the case of a corporation. For all practical purposes, section 45 has substantially the same effect as if compulsory incorporation had been provided for.

Section 46: This provides for the consent in writing of the Minister of Labour before prosecution proceedings can be instituted. This is quite unsatisfactory. The consent to prosecute should not be issued by the Minister of Labour but by the labour relations board. This is the practice under P.C. 1003 (section 45). Ministers of Labour and governments change from time to time. The possibility of political pressure should not be allowed to attach itself to the matter of law enforcement. The issuance of the consent to prosecute is an administrative function and should be disposed of by the labour relations board which is an administrative body and should not be dependent upon ministerial discretion.

Injunction

The indiscriminate and irresponsible use of the injunction process, particularly the ex parte interim injunction, is coming to be used with increasing frequency. Unfortunately, due to the constitutional division of responsibilities, parliament is helpless to do anything about it even if it wanted to. It occurs to us, however, that the dominion government might use its influence to suggest to the provinces legislation along the following lines:—

> Notwithstanding anything contained in any other Act, no application for mandamus or injunction may be made to a court in connection with any dispute or difference between an employer or employers and his or their employees except by or with the consent of the board, evidenced by a certificate, signed by or on behalf of the chairman of the board.

The injunction procedure comes into operation usually at a critical period of employer-employee relations. Generally speaking, the injunctive procedure is exercised by an employer in the event of picketing activities by his employees in the course of a strike. The labour relations board and the Department of Labour in each province administers the relationships between employers and their employees up to the moment where a strike is called. Very often, in fact almost invariably, the Department of Labour carries on its attempts to settle a strike after a strike is called. The courts do not figure in the picture at any stage of the proceedings. To bring the courts into the picture at the most critical stage of the proceedings is clearly unreasonable and unrealistic.

Courts of law are not familiar with industrial relations. The injunctive process is highly obnoxious to organized labour and its indiscriminate use is certainly not conducive to industrial tranquillity.

It is conceivable that the injunctive process could be used by an unscrupulous employer to frustrate or to negative existing laws respecting labour relations. For instance, the labour relations board may certify a union as bargaining agent contrary to the wishes of an employer; after obtaining certification, a union may enter into negotiations for a collective agreement; the employer may refuse to negotiate or may not find it propitious to agree to a collective agreement; a conciliation board may be appointed which may recommend in favour of the union; the employer may disregard the conciliation board's recommendation leaving the union no choice but to strike. The union may then strike only to find itself frustrated by an injunction.

It is suggested, therefore, that the injunctive process should not be permitted to be used unless there is real justification for exercising it in order to restrain violence, real or apprehended, etc. By requiring an employer to obtain approval of the labour relations board, the courts are not being deprived of any jurisdiction. It is merely a means of ensuring an investigation by a board whose approach to the problem would not be narrow and confined to the specific issue involved but, rather, would approach the problem from a broad standpoint and with a full knowledge of all the implications involved. Such a procedure would particularly avoid the unfair use of the interim injunction. At the present time, an employer, even though he may not have a good case, may gain his immediate ends by breaking a strike (legally called) by obtaining an ex parte interim injunction even though the courts may subsequently refuse to make the injunction permanent. It will be realized that this is not an unreasonable procedure when it is recalled that employees must apply under P.C. 1003, to the board for permission to prosecute an employer.

The Brotherhood endorses the submissions which have been made to this committee by The Canadian Congress of Labour and particularly associates itself with paragraphs 10, 11, 13, 20, 21, 24 and 26 thereof.

Respectfully submitted,

A. R. MOSHER,
National President.

Ottawa, July 1, 1947.

Mr. McIvor: Well read, Mr. Mosher.

Mr. Lockhart: Mr. Chairman, may I clarify one thing; at the points where the word "I", the singular, is used, I take it that that means that it is the president's own personal opinion. The latter part of the brief, the last paragraph, clears up the part with which the Brotherhood associates itself. Is that correct?

The Witness: No, not necessarily. I think there was only one instance where "I" means my own personal view, and that is relating to a case of which I have personal knowledge in connection with the National Labour Relations Board. In all other cases the pronoun represents the view of the Brotherhood. I think there is a very clear distinction where it applies to myself personally.

The Vice-Chairman: Gentlemen, you have heard the brief. Are there any questions at all? Would anyone have any doubts arising in his mind having heard that brief?

Mr. Knowles: I would move its adoption.

Mr. Timmins: Mr. Chairman, I think it is a very comprehensive brief. The arguments are given as it goes along. But there is nothing that I call to mind in bill 338 with respect to injunctions; is that right?

The Vice-Chairman: Go ahead.

Mr. Timmins: I think I must disagree with Mr. Mosher with respect to this matter of injunctions. You are not suggesting, Mr. Mosher, are you, that the parties, either the employer or the employee, can go to court and get an interim injunction just as a matter of course, without having a prima facie case that there has been a breach of the law?

The Witness: He does not have to give any notice to the employees.

Mr. Timmins: Oh, no; that is perfectly all right; but he has to satisfy the court that there has been a breach of the law, a prima facie case, before he gets an interim injunction. You do not agree with that, do you?

The Vice-Chairman: I think Mr. Mosher pointed out that they were ex parte.

Mr. Merritt: Let the witness answer the question. I understand that anyone who applies for an interim injunction shows evidence on the affidavit.

The Witness: Mr. Wright will answer that.

Mr. Wright: I think the answer is simply this, that when an application is made ex parte to the superior court judge for an injunction proceeding the only evidence which as a rule is submitted to the judge in chambers is an affidavit on behalf of the plaintiff in the action. The judge, if he is satisfied that the affidavit indicates a prima facie case, will grant an interim injunction and the writ can be returnable within seven days. As suggested in the brotherhood's brief, by the time the seven days may have elapsed, the strike, called for possibly a very good reason, might have been ended, principally because the interim injunction was obtained without notice to the other side—in this case the union—was obtained before the crucial stage of the strike. On the application to make the injunction permanent the application may be thrown out, but the harm has been done and the strike has been broken; and that is the argument.

Mr. MERRITT: But the affidavit would have to show the facts which constitute a prima facie breach of the law.

The WITNESS: In the opinion of the emloyer only.

Mr. WRIGHT: I am saying this, that in actual practice—I speak from my own experience and that of other solicitors—it is not difficult to obtain an interim injunction from a judge in chambers. The presumption is made by the judge, and properly so, that there is a good prima facie case in favour of making an interim injunction. The court only goes into the issues broadly on the application to have the interim injunction made permanent.

Mr. TIMMINS: Supposing there was illegal picketing and the affidavit discloses that there was illegal picketing, there is nothing wrong about a judge granting an interim injunction on the basis of the material brought before the judge. After all, there are more than two sides to this matter—there is the public.

Mr. WRIGHT: I agree, sir, and I am not suggesting for a moment that there are not cases in which the injunction procedure would be capable of being used and properly so; but I do say—and if you refer to the brief that refers to cases where an unscrupulous employer—and unfortunately there are such—can use the device of the interim injunction to defeat a trade union's activities at the crucial stage of the proceedings.

Mr. TIMMINS: Just explain first of all whether you are talking about injunctions in Canada or injunctions that have been granted in the United States? What do you mean by the crucial point in a strike?

Mr. WRIGHT: I am referring only to Canadian experience. What I mean when I refer to the crucial stage of a strike is simply this, and we did give an illustration: a trade union may apply to the Labour Relations Board for certification; it may satisfy the Labour Relations Board that they enjoy the majority membership of the employees in a unit and they obtain certification. They enter into negotiations with the employer. The employer may disagree with the trade union and refuse to sign the collective agreement that is submitted. The parties then apply for a conciliation officer. The conciliation officer may recommend to the minister that he is unable to effect a settlement and may recommend the appointment of a conciliation board. The conciliation board may be appointed—this may be hypothetical, but it is quite possible—this is legislation that the committee is considering at the present time—the conciliation board may meet and either by way of a majority decision or a unanimous decision may recommend in favour of the employees. The employer may still be adamant in his stand and may still refuse to meet the terms of the union, and then in complete frustration the trade union, having no alternative, may see fit to call a strike, a legal strike within the meaning of P.C. 1003 and Bill 338. At precisely the moment when the trade union seeks to call a strike the employer may walk down to a judge in chambers and on the affidavit only of a general manager of the plant may obtain an interim injunction for a period of, say, seven days. Trade union funds are not limitless as some people will believe, and it is precisely within the period of seven days that the entire conciliation machinery may be defeated and the employees may not be able to hold out.

Mr. MERRITT: This seems to suggest that there is a weakness in the law generally. That is what happened in a case that did not involve industrial relations. Now, just carrying your hypothetical case one step further than you did, tell me what kind of affidavit you would visualize a general manager swearing to to support the injunction? What fact would it allege which would be a breach of the law in the case you have suggested?

Mr. WRIGHT: He would allege, generally speaking, that the employees are watching and besetting his premises and guilty of unlawful picketing and as the result of illegal or unlawful activities property damage has occurred or something like that. Those are the allegations.

Mr. MERRITT: Those allegations are allegations of fact, and if those facts had no foundation then the person who swore the affidavit would be liable to prosecution for perjury; is not that the case?

Mr. WRIGHT: Technically, yes he would.

Mr. MERRITT: More than technically; in fact.

Mr. WRIGHT: Yes, in law he would be.

The VICE-CHAIRMAN: As a matter of fact, Mr. Merritt, what he does is: he says that in his opinion there is illegal picketing.

Mr. MERRITT: Mr. Chairman, you are interrupting; because I am rather interested in this question which seems to me to strike generally at the whole administration of our law—not only on the question of industrial relations. The witness did not say he suggests generally there is illegal picketing; what he said constituted facts.

The VICE-CHAIRMAN: I am giving the committee the benefit of some experience in connection, perhaps, with the injunction that was obtained here by the Ottawa Car Company just recently. I know what the affidavit contained. I think the committee would be interested, although the matter is one purely in the provincial jurisdiction and is under the Judicature Act. There is nothing we can do about it. The allegation there was one of alleging—I do not say there was not actual illegal picketing, but it was not proved—but in alleging that he was able to obtain an interim injunction.

Mr. MERRITT: The man who swore that affidavit took the risk that if his allegation was found to be baseless he would be liable to be prosecuted for perjury.

The VICE-CHAIRMAN: No, I do not think so.

Mr. MAYBANK: The affidavit can be made in such a way that even if there is proven grounds there is no danger of perjury. It may be completely disproven but there is not much chance of pejury being charged.

Mr. TIMMINS: Just to keep the record straight, we ought to put on record the fact that with respect of any injunction there has to be a bond put up by the person who obtains the injunction to be responsible for loss and damage. You cannot get an interim injunction without putting up a bond.

The VICE-CHAIRMAN: Yes, under certain conditions when damage is likely to ensue; but in these matters the judges are in the habit of giving injunctions without bond.

Mr. TIMMINS: Now, my second point is: if an interim injunction is given there is no question about it that the person against whom the injunction is given has got the right to arrange for an early appointment and have the matter disposed of forthwith. Thirdly, I do not believe that in Canada we have had an injunction granted which went to the root of defeating a strike or anything like that—nothing as bad as that I have ever heard of.

The VICE-CHAIRMAN: That is a matter of opinion. For the first time in this committee I must disagree with you on two cases that I think I know something of where that at least was the intention of the injunction; and in one case I think it rather worked out as they intended it should work out. But that is not a common practice and it has not become common practice, but it has been more in use in the last three months or six months than I have seen it in the last six years. It is a matter under the Judicature Act, you know, and it probably applies in the other provinces as well. The decisions have been varied on it.

I suppose we might very well, for the moment, let it drop because I do not think it concerns us to-day.

Mr. MERRITT: Several times in these briefs we have been hearing in the last two days, I have seen passages which suggest to me that a very large and influential number of organizations in this country and, perhaps a large number of individuals, have a distrust of our Canadian law. I think it might be very useful if these discussions were brought to the attention of the Minister of Justice and the Attorneys General of the provinces so that this kind of distrust of our law which is the whole foundation of our society can be removed by perhaps some changes in that law if those changes are justified. I cannot see anything that could be more dangerous to the whole foundation of Canadian society than that there should be a group or an individual in Canada who does not have trust in our law.

The WITNESS: May I ask whether any reference is being made to the brief I have presented? If so, I should like to know to what passage you are referring?

Mr. JOHNSTON: I think this discussion could well be carried on after we have heard the witness.

The VICE-CHAIRMAN: We have heard the witness and we are now questioning him. Are there any other questions relative to the brief?

Mr. HOMUTH: There is a question concerning injunctions in the brief and we should like to have Mr. Mosher and Mr. Wright express opinions in regard to it to find out if there have been cases in this respect and how they have been worked out. I agree with Mr. Merritt.

The VICE-CHAIRMAN: We have exhausted that subject for the moment. Are there any further questions?

By Mr. Merritt:

Q. Could Mr. Mosher give us the citation of the Ontario Labour Relations Board case under P.C. 1003 which held that foremen and supervisors could not be regarded as employees which is mentioned on page 4?—A. Just a minute, I think we can.

Mr. WRIGHT: It is the Spruce Falls Power and Paper Company Limited and the International Brotherhood of Paper Makers, Kapuskasing, Foremen's Local 523. It is a decision of the Ontario board and is dated January 29, 1947.

By Mr. McIvor:

Q. I would refer to page 10, line 2 of your brief:

> The principle herein contained strikes at the fundamental concept of trade unions, namely, it is a voluntary association of workers.

Are all your unions voluntary?—A. Yes, sir.

Q. They are not really closed shops?—A. No.

The VICE-CHAIRMAN: Thank you very much, Mr. Mosher and Mr. Wright.

Gentlemen, you have before you a brief from the Hudson Bay Mining and Smelting Company Limited, Mr. Maybank, who is to present this brief?

Mr. MAYBANK: Mr. Green.

W. A. Green, General Manager, Hudson Bay Mining and Smelting Company Limited called:

The WITNESS: Mr. Chairman and members of the committee: I come before you representing the Hudson Bay Mining and Smelting Company Limited of whom I am general manager, not with the idea of passing comment on your new bill, but for the purpose of explaining to you a particular problem which we have and which we would request be rectified by amendment to this bill.

The mine and metallurgical plants of Hudson Bay Mining and Smelting Co., Limited are situated astride the Manitoba-Saskatchewan interprovincial boundary adjacent to the town of Flin Flon, Manitoba. The company is the second largest producer of copper and zinc and one of the largest producers of gold and silver in the Dominion of Canada, and, in addition, produces cadmium, tellurium, and selenium; all of which metals are of such vital necessity in time of war and are also of great importance to the welfare of the nation in time of peace, both from the standpoint of furnishing the raw materials upon which to build up the manufacturing industry without purchasing abroad, and also through its export business to build up foreign credits. Prior to the outbreak of World War II, 85 per cent of the company's zinc production and 100 per cent of its copper production were exported. As an indication of how well the company met the demand for its products when the life of the nation was at stake during the recent war, the following comparison of production of the principal metals during the six pre-war years and the six war years will illustrate:

	1934-39 (incl.)	1940-45 (incl.)	% increase During War Years
Gold	711,878 ozs	997,198 ozs.	40
Silver	9,491,741 ozs	15,145,131 ozs.	60
Copper	300,080,376 lbs	463,264,503 lbs.	54
Zinc	397,349,944 lbs	583,715,558 lbs.	47

In every sense of the word, the company's operation is for the benefit of Canada as a whole, and due to its geographic position is, in addition, for the benefit of two or more provinces as defined in the B.N.A. Act, Section 92-10-c. This being the case, it is submitted that it should be so declared by the parliament of Canada.

The following brief summary of the employment and operating conditions at the mine and plant will emphasize the necessity for one jurisdiction in labour matters.

(1) The company's head office is in Manitoba.
(2) Employees are all hired in Manitoba.
(3) Employees are paid in Manitoba.
(4) Ninety-five per cent of the employees reside in Manitoba.
(5) Five per cent of the employees reside in Saskatchewan.
(6) The number of employees working in each province is about equally divided.

(7) The work is of such nature that certain employees are back and forth between the two provinces throughout their shift work every day, while others may work in one province one day and in the other the next.

I would ask the members to turn to the attached drawing*. This drawing shows Saskatchewan in blue and Manitoba in yellow. The ore body is outlined in red. You will note that the boundary line runs through the smelter building, through the zinc building, through the mill and cuts the ore body and the mine in two places.

By Mr. Knowles:

Q. Mr. Green, would you also indicate on that large map behind you this location, if you can reach that high?—A. It will be difficult to show you. It is at that jog which comes in there. It is a correction line.

Q. It is just opposite the "N" in Saskatchewan?

Mr. MAYBANK: Just about on a level with the printing of "Saskatchewan and Manitoba."

The attached drawing (Appendix "A") shows the position of the mine and ore body, as well as the main metallurgical plants of the Company, in respect to the interprovincial boundary.

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*Drawing not printed.

Under the present situation, it is an utter impossibility to say who should come under Saskatchewan regulations and who should come under Manitoba regulations. By way of illustration, the following cases may be cited:—

(1) Train crews are operating ore trains on standard-gauge tracks throughout the day and night, hauling ore from the south main shaft in Saskatchewan to the crushing plant adjacent to the north main shaft in Manitoba.
(2) Train crews are operating continuously along haulage ways driven underground between the two provinces.
(3) Miners may be working in one province one day and in the other province the next day.
(4) Operators in the mill, zinc plant, and smelter buildings are passing back and forth across the boundary line continuously in order to carry on their work.
(5) Mechanics, electricians, boilermakers, carpenters, truck drivers, and all service department employees are almost certain, at some time or other, to be obliged to cross the boundary, although the various auxiliary shops are in Manitoba.

The foregoing are general examples, and it might be added that of the some 2,200 employees of the company, there would be scarcely anyone but who sooner or later might be called upon to cross the border.

Throughout the war years the company's operations came under dominion jurisdiction and there were no problems of dual authority such as the operation is confronted with now. The company and its employees as represented by their Unions have enjoyed the finest relations, and on April 19 of this year completed a renewal of their collective bargaining agreement, mutually satisfactory to all concerned. Under the agreement the employees enjoy the following advantages:

(1) High wages.
(2) The best shift differential in the industry.
(3) Annual vacations with pay for hourly-paid employees on a graduated scale, from one week (six days) after one year's service to fourteen days after nine years' service, with an extra seven days added (total: twenty-one days) for those having fifteen years' or more service with the company.
(4) Group life insurance.
(5) Old age pensions.
(6) Non-occupational accident and sick benefits.
(7) An all-embracing health and medical plan believed to be second to none.
(8) A voluntary check-off.
(9) A no-strike, no-lockout clause, with a method of procedure for arbitration and final settlement of dispute.

The above conditions of employment are stated in order to give a full understanding of the situation. There is no desire on the part of the company, nor, I am sure, on the part of the employees as represented by their unions, to dodge any responsibilities under the laws of any province, but rather, in the cause of industrial harmony and in the best interest of all concerned, it is felt that there should be one authority to which the company and the employees should be responsible in matters of labour legislation. In speaking of labour legislation, it is meant to include conditions of employment as well as procedure for collective bargaining and settlement of disputes. Under P.C. 1003 and, it is understood, under the newly proposed Dominion Industrial Relations and Disputes Investigation Act, those operations which come under dominion jurisdiction must: (1) bargain regarding conditions of employment, including rates of pay, hours of work, or other terms or conditions of employment; and (2) once an agreement is entered into by collective bargaining, the parties bound by the agreement must do everything they are required to do in accordance with that agreement.

It is felt that if those conditions of employment which have been arrived at in good faith are to be effective, and in order to prevent trouble for all concerned (i.e., the governments, employees, and employers), there should be an additional clause added to the new Labour Bill which would, subject to such acts or regulations as the dominion government may from time to time enact, give force of law to the terms of the collective agreements arrived at under the Act.

Where money is involved, as in the case of taxes, royalties, compensation insurance premiums, etc., suitable arrangements can be made to meet the requirements of each province. It is quite apparent that matters involving human rights, such as labour relations and conditions of employment, cannot be arbitrarily divided. It is agreed by all concerned that it is impractical to work under two sets of regulations and two authorities insofar as labour matters are concerned, and the only solution is to come under the labour jurisdiction of the dominion government.

SUMMARY

As a result of months of study and negotiations, the situation now stands as follows:

(1) The six labour unions representing the employees have, by formal resolution and otherwise, requested that all phases of labour legislation other than workmen's compensation be vested in the dominion government. (See Appendices "B", "C", and "D".)

(2) The Hudson Bay Mining and Smelting Co., Limited has requested both provincial and dominion authorities to take the necessary steps to have the company's operations brought under dominion jurisdiction in all labour matters.

(3) The provinces of Manitoba and Saskatchewan have both requested that the dominion government take over complete labour jurisdiction of the company's operations, other than for workmen's compensation.

(4) The Dominion Department of Labour has submitted certain proposals to the provincial governments to fulfill the desires of all concerned, and these proposals have been approved of by both the provinces of Manitoba and Saskatchewan.

In view of the foregoing, and to improve and maintain harmonious industrial relations by the removal of an impossible situation, it is hoped that the Industrial Affairs Committee will see fit to recommend to the Parliament of Canada for adoption the proposals put forward as a solution to the problem by the Dominion Department of Labour and approved by the provincial governments.

Respectfully submitted,

HUDSON BAY MINING AND SMELTING CO., LIMITED,

W. A. GREEN,
General Manager.

APPENDIX

RESOLUTION *RE* JURISDICTION IN LABOUR LEGISLATION AT THE PROPERTY OF THE HUDSON BAY MINING AND SMELTING CO., LIMITED, FLIN FLON, MANITOBA

Whereas: The trade unions hereunder named, having a collective bargaining agreement with the Hudson Bay Mining and Smelting Co., Limited at Flin Flon, Manitoba, whose operations are in two provinces, are desirous for the purposes of the practical application of labour legislation that we be brought within the jurisdiction of the federal government in the same manner as we were in the application of P.C. 1003, Wartime Labour Relations Regulations;

Therefore be it resolved: That we, the undersigned duly authorized representatives of the trade unions herein referred to, request that the Honourable the Minister of Labour for the province of Manitoba and the Honourable the Minister of Labour for the province of Saskatchewan take the necessary and appropriate action leading to the granting of this request.

FLIN FLON BASE METAL WORKERS' FEDERAL UNION No. 172

G. M. Ferg, *President*
Henry Schellenberg, *Secretary*
D. A. McEachern, *Bargaining Representative*
J. A. Lavis, *Bargaining Representative*

INTERNATIONAL ASSOCIATION OF MACHINISTS, FLIN FLON LODGE No. 1848

G. W. Jamieson, *President*
H. J. Rutley, *Vice-President*
Gunnar Folkeston, *Bargaining Representative*
Miles Anderson, *Bargaining Representative*

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION No. B-1405

Don M. Dow, *President*
W. Warnick, *Secretary*
Howard Bayley, *Bargaining Representative*
Peter McSheffrey, *Bargaining Representative*

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS AND HELPERS OF AMERICA, LOCAL UNION No. 451

H. Forsyth, *President*
J. A. Hewitt, *Secretary*
S. E. T. Dodd, *Bargaining Representative*
Wm. Hinde, *Bargaining Representative*

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION No. 1614

R. A. Frederickson, *President and Bargaining Representative*
E. A. Stenbach, *Vice-President*
A. G. Brice, *Bargaining Representative*

BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, LOCAL UNION No. 1497

GEORGE GARNER, *President and Bargaining Representative*
J. BUCKLAND, *Secretary*
ALEX BONWICK, *Bargaining Representative*

APPENDIX

RESOLUTION OF NORTH OF 53' TRADES AND LABOUR COUNCIL *RE* FEDERAL JURISDICTION IN LABOUR LEGISLATION AT FLIN FLON, MAN.

Whereas: The trade unions having a collective agreement with the Hudson Bay Mining and Smelting Co. Ltd., at Flin Flon, Manitoba, have petitioned the Honourable the Minister of Labour for the province of Manitoba and the Honourable the Minister of Labour for the province of Saskatchewan requesting that jurisdiction in labour legislation be brought within that of the federal government, and;

Whereas: This proposal appears to be the most practical solution to the problem as it obtains at Flin Flon where operations of the above referred to mining company are in two provinces.

Therefore be it resoluved: That this trades and labour council hereby desires to be recorded as supporting these affiliated trade unions in this request and that copies of this resolution be forwarded to the Executive Council of the Trades and Labour Congress of Canada, to the Manitoba and Saskatchewan Executive Chairmen of the Trades and Labour Congress of Canada and to the Honourable Ministers of Labour concerned.

Done and passed this 18th day of February, 1947.

NORTH OF 53' TRADES AND LABOUR COUNCIL

PETER MCSHEFFREY, *President*
THOS. B. WARD, *Secretary-Treasurer*

APPENDIX

Flin Flon, Manitoba,
MAY 16, 1947.

W. K. BRYDEN,
Deputy Minister of Labour,
Regina, Sask.

Re you letter of May twelfth with reference to labour legislation at plant of Hudson Bay Mining and Smelting Company stop following conference today we are agreed that all phases of labour regislation should be vested in the federal government with the exception of workmen's compensation accident fund legislation which both the mining company and the unions are agreed should be retained by the province stop will confirm this information by letter.

PETER McSHEFFREY,
(*President, North of 53 Trades and Labour Council*).

The VICE-CHAIRMAN: I think we ought to hear from the Minister for a a moment, now?

Hon. Mr. MITCHELL: I would just like to say a couple of words on this. I have carried on correspondence with the Provincial Governments of Manitoba and Saskatchewan and I think it would be well if, rather than read them, I were to file them from the actual record. I have on my file as well, letters from the Trade Union organization, but, as Mr. Green has mentioned it in his brief, I do not think it is necessary to file it.

The VICE-CHAIRMAN: It is in the brief.

Hon. Mr. MITCHELL: I would say this to you. The position is that it is not for the general good of Canada but rather it is for the unique condition faced by the industry where it goes underground into both provinces—Manitoba and Saskatchewan. These amendments that have been drafted have not, of course, been approved by the government and that should be clearly understood, although personally, I feel it is a most sensible approach owing to the conditions which exist in the particular industry. With your permission I will file these for the record.

Mr. MAYBANK: That is the correspondence between the governments?

Hon. Mr. MITCHELL: With Manitoba and Saskatchewan.

The VICE-CHAIRMAN: May that be a part of the record?

Carried.

MINISTER OF LABOUR

SASKATCHEWAN

JUNE 17, 1947.

Honourable HUMPHREY MITCHELL,
Minister of Labour,
Ottawa, Ontario.

Dear Mr. Mitchell: The Premier has asked me to deal with your letters of June 5th and June 10th regarding the Hudson Bay Mining and Smelting Company Limited.

I have given some study to the legislative proposal contained in your letter of June 10th, and I have paid particular attention to the explanation of that proposal contained in the second last paragraph of your letter. This paragraph reads as follows:

"As I advised you in my letter, a limited declaration is not considered legally feasible by the law officers of the Crown. On the other hand, as I advised you, the fact that the Dominion has made an unlimited declaration does not vest in the Crown any proprietary interest in the undertaking of the Company, and the opinion of the law officers makes it clear that provincial proprietary rights are not affected by such declaration, neither has the Dominion any legislative interest in the operations of the Company other than to provide at the instance of the provinces concerned a solution for the difficulties in the matter of labour legislation which the Government of your Province and the Government of Manitoba have recognized and wish to meet".

On the basis of the understanding contained in the paragraph just quoted, it appears to me that your legislative proposal will solve satisfactorily the difficult problem existing in relation to the Hudson Bay Mining and Smelting Company, and I would therefore request, on behalf of the province of Saskatchewan, that you submit this legislation to Parliament for approval.

Yours sincerely,

(*Sgd.*) C. C. WILLIAMS,
Minister of Labour.

PROVINCE OF MANITOBA

MINISTER OF LABOUR

WINNIPEG, June 13, 1947.

Hon. Humphrey Mitchell,
Minister of Labour,
Ottawa, Ontario.

Re: Hudson Bay Mining and Smelting Co. Ltd.

Dear Mr. MITCHELL,—Your letters of June 5 and 10 reached me on my return to the city yesterday.

The proposal contained in your letter of June 10 by way of amending your proposed labour relations legislation as contained in draft sections 73 and 74 to be added to that legislation, has been considered. I see no reason why the proposal should not work out satisfactorily. It will place the above Company's plant under the control of the Dominion for legislative purposes and the proposed section 74 will have the effect of the Dominion occupying the field in respect of rates of pay, hours of work, etc.

The terms of the proposed legislation are in accord with the desires of our Government and we therefore approve the proposals.

Yours very truly,

(Sgd.) C. R. SMITH,
Minister of Labour.

OTTAWA, June 10, 1947.

Honourable C. Rhodes Smith, K.C.,
Minister of Labour for Manitoba,
Winnipeg, Manitoba.

Re: Hudson Bay Mining and Smelting Co. Ltd.

Dear Mr. SMITH,—Since writing you on the 5th instant with reference to the above, the representatives of the Hudson Bay Mining and Smelting Company Limited have submitted to me for consideration a specific legislative proposal designed to take care of the difficulties of the situation of the Company, and which are in accordance, I understand, with the discussions which the Company has had with your Government.

This legislation, it is suggested, would be submitted by way of an amendment to our proposed labour relations legislation.

> 73. The works and undertakings of Hudson Bay Mining and Smelting Co., Limited, in the Flin Flon Mineral area on both sides of the interprovincial boundary line between the Provinces of Manitoba and Saskatchewan, are hereby declared to be a work for the general advantage of two or more of the provinces.
>
> 74. The rates of pay, hours of work, vacations with pay, and other conditions of employment (but excepting Workmen's Compensation), of employees of Hudson Bay Mining and Smelting Company Limited, employed upon or in connection with the works and undertakings of the said Company described in section seventy-three, shall be such as are established from time to time by collective agreement between the said Company and the bargaining agents of said employees.

As I advised you in my letter, a limited declaration is not considered legally feasible by the law officers of the Crown. On the other hand, as I advised you, the fact that the Dominion has made an unlimited declaration does not vest in the Crown any proprietary interest in the undertaking of the Company, and the opinion of the law officers makes it clear that provincial proprietary rights are not affected by such declaration, neither has the Dominion any legislative interest in the operations of the Company other than to provide at the instance of the provinces concerned a solution for the difficulties in the matter of labour legislation which the Government of your Province and the Government of Saskatchewan have recognized and wish to meet.

I shall appreciate, therefore, if you will give this legislative proposal your early consideration and let me know whether the terms are acceptable to you and if you are satisfied that this legislation should be submitted for approval of Parliament.

Awaiting your further advice,

Your sincerely,

(*Sgd.*) HUMPHREY MITCHELL.

OTTAWA, June 10, 1947.

Honourable THOMAS C. DOUGLAS,
Premier,
Province of Saskatchewan,
Regina, Saskatchewan.

Re: Hudson Bay Mining and Smelting Co. Ltd.

Dear Mr. PREMIER: Since writing you on the 5th instant with reference to the above, the representatives of the Hudson Bay Mining and Smelting Company Limited have submitted to me for consideration a specific legislative proposal designed to take care of the difficulties of the situation of the Company, and which are in accordance, I understand, with the discussions which the Company has had with your government.

This legislation, it is suggested, would be submitted by way of an amendment to our proposed labour relations legislation.

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As I advised you in my letter, a limited declaration is not considered legally feasible by the law officers of the Crown. On the other hand, as I advised you, the fact that the Dominion has made an unlimited declaration does not vest in the Crown any proprietary interest in the undertaking of the Company, and the opinion of the law officers makes it clear that provincial proprietary rights are not affected by such declaration, neither has the Dominion any legislative interest in the operations of the Company other than to provide at the instance of the provinces concerned a solution for the difficulties in the matter of labour legislation which the Government of your Province and the Government of Manitoba have recognized and wish to meet.

I shall appreciate, therefore, if you will give this legislative proposal your early consideration and let me know whether the terms are acceptable to you and if you are satisfied that this legislation should be submitted for approval of Parliament.

Awaiting your further advice,

Yours sincerely,

(Signed) HUMPHREY MITCHELL.

Mr. KNOWLES: Will that also be true of the appendices which Mr. Green did not read? They should be included in the record.

The VICE-CHAIRMAN: Yes.

Mr. ADAMSON: Would this require only a recommendation of the committee or would an amendment to the Act have to be drafted?

Hon. Mr. MITCHELL: It will have to be an amendment to the Act.

The VICE-CHAIRMAN: The committee will draft an amendment and pass it, subject to the department agreeing that it is a proper one. We will agree on it.

Mr. MAYBANK: In order to make that somewhat more clear, by reason of the fact Mr. Mitchell did not read the letters which he has laid on the table, I have copies of them here, and I understand they have been mimeographed and the proposals which were made actually went the length of suggesting the precise changes in the law which precise changes were submitted, both Mr. Green and Mr. Mitchell have said, to the respective governments and they have agreed. That answers your point, Mr. Adamson. It is that unique case where everybody seems to agree.

Mr. McIVOR: I must say I am agreeably surprised by page 5. I think this is one of the finest things we have seen. If they have co-operation like this between the two provinces and the dominion there will be no trouble. I think this is just what we have been working for. Where the men and women workers and the management have agreed, and with a no strike, no lockout clause, with the method of procedure for arbitration and final settlement provided for, you do not even need the dominion government to help these people. They can look after themselves.

Mr. HOMUTH: We certainly do not need them.

The VICE-CHAIRMAN: This concludes all we have scheduled for to-night. To-morrow morning we have two things at 10.30 a.m. We have the brief of the Catholic unions which will be read in the morning, and we have bill 24, if you recall, known as the Knowles bill. There are some representations to be made both by the Department of Transport and also the legal departments of the railways on that. They will be available to-morrow morning. We hope to-morrow morning to conclude our hearings.

By Mr. Johnston:

Q. Before Mr. Green leaves I should like to ask this question. I was looking at the map. I noticed a smelter, a zinc plant and a mill, according to the map, which are built right on the boundary line. Why was that?—A. In building plants of that sort you try to depend on gravity for the flow of your material through the plant. It just so happens that along there is a hillside and, of course, at the time that plant was built there was no thought of troubles of this sort.

Q. Would you not have thought when you built that right on the boundary line that there might be some difficulty later on? As you say there might have been a slope on the land, but I do not think that slope—it may have but I doubt it—would have quit so suddenly that you could not have put them all in one province or another.

Mr. HOMUTH: They were not sure what type of government would be in either province.

Mr. JOHNSTON: I am asking Mr. Green.

Mr. MAYBANK: If it only depends on the buildings—

Mr. JOHNSTON: I am asking Mr. Green. I know what your answer will be.

Mr. MAYBANK: I thought you were making a statement.

The VICE-CHAIRMAN: Order, order; this is not the House of Commons.

Mr. MAYBANK: Mr. Chairman, on a point of order, I respectfully submit to the other members of the committee that the chairman should stand and be more dignified when he calls order.

The WITNESS: Actually to have found a location where you could have made use of gravity flow in your plants it would have meant removing the plant to some distance away from the mine shaft. It would be a more expensive operation.

The VICE-CHAIRMAN: It looks as though it just happened.

Mr. JOHNSTON: I do not think so.

The VICE-CHAIRMAN: Oh, I do not know. Saskatchewan agrees, anyway. Thank you.

The committee adjourned at 9.25 p.m. to resume on Thursday, July 3, 1947, at 10.30 a.m.

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Canada. Industrial Relations, Standing
Cttee on, 1947

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SESSION 1947

HOUSE OF COMMONS

STANDING COMMITTEE
ON
INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE
No. 5

THURSDAY, JULY 3, 1947

WITNESSES:

Mr. E. A. Driedger, Senior Advisory Counsel, Department of Justice, Ottawa;

Mr. A. B. Rosevear, K.C., Assistant General Solicitor, Canadian National Railways;

Mr. E. B. Hawken, Assistant-Secretary and Staff Registrar, Canadian National Railways;

Honourable Lionel Chevrier, M.P., Minister of Transport.

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1947

MINUTES OF PROCEEDINGS

THURSDAY, 3rd July, 1947.

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. Mr. Croll, the Vice-Chairman, presided.

Members present: Messrs. Adamson, Archibald, Beaudoin, Baker, Blackmore, Charlton, Cote *(Verdun)*, Croll, Gauthier *(Nipissing)*, Gibson *(Comox-Alberni)*, Homuth, Johnston, Knowles, Lafontaine, Lapalme, MacInnis, McIvor, Maybank, Mitchell, Ross *(Hamilton East)*, Sinclair *(Vancouver North)*, Skey, Timmins, Viau.

The Chairman informed the Committee that a brief in the French language from the Canadian and Catholic Confederation of Labour had been received. He read a translated version.

It was ordered that the French language version be printed in conjunction with the translated copy.

Mr. E. A. Driedger, Senior Advisory Counsel, Department of Justice, Ottawa, was called. He read a prepared paper on the constitutionality of Bill No. 338.

It was ordered that the Department of Justice be requested to have a legal adviser in attendance in the Committee during the clause-by-clause consideration of Bill No. 338.

It was also ordered that the paper described as *Appendix "B"* in the introductory remarks of Mr. Pat. Conroy, Secretary-Treasurer, the Canadian Congress of Labour, in his presentation to the Committee on Monday, 30th June, be printed when received as an appendix to the evidence.

The Committee considered the subject-matter of Bill No. 24, an Act to amend the Railway Act.

Mr. Knowles, sponsor of the bill, made a statement.

Debate followed.

Mr. A. B. Rosevear, K.C., representing the Canadian National Railways, was called. He made a statement and was questioned.

Mr. E. B. Hawken, Assistant-Secretary and Staff Registrar, Canadian National Railways, assisted during the questioning.

Honourable Lionel Chevrier, M.P., Minister of Transport, was in attendance. He made a statement in support of the presentation made by the Canadian National Railways and informed the Committee that he had received representation on behalf of the New York Central Railway Company. He suggested that this Company be permitted to make a presentation to the Committee.

It was ordered that the Canadian Pacific Railway Company and the New York Central Railway Company be informed that the committee is prepared to hear their representations on Monday, 7th July.

The Committee adjourned at 12.30 o'clock p.m., to meet again at 10.30 o'clock a.m., Monday, 7th July.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

House of Commons,

July 3, 1947.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Vice-Chairman, Mr. D. A. Croll, presided.

The Vice-Chairman: Gentlemen, I am sorry we were not ready to proceed at 10.30 but it took some time to get this brief prepared. You now have the brief from the Catholic Federation and I think it had better be read in fairness to all concerned. I will read it:—

Submitted on behalf of The Canadian Catholic Confederation of Labour to the Standing Committee on Industrial Relations in connection with bill 338 (An Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes).

June 30, 1947.

1. First of all the CTCC wishes to express its appreciation for the procedure followed in the preparation of the federal legislation relating to industrial problems. As early as the month of October, 1946, the hon. Minister of Labour summoned a federal-provincial conference of all the ministers of labour of the country in order to study the problems relating to labour. In December, 1946, a first draft relating to industrial relations and labour disputes was submitted confidentially to the principal Canadian trade unions in order to ascertain their opinion on the subjects discussed. The CTCC was informed that the employers' organizations and the provincial governments were also consulted. On June 17, 1947, a bill (No. 338) was given first reading at Ottawa, and the different associations concerned were invited by the Chairman of the Standing Committee on Industrial Relations of the House of Commons to present their views on the subject. The present brief is a reply to this invitation.

2. Bill No. 338 seems to concern only the industries over which the federal jurisdiction established, and respects the autonomy of the provinces. That is altogether in accordance with the views of the CTCC. As a matter of fact, the brief submitted to the federal authorities by our organization (which include 70,000 salaried workers) on March 13, 1947, says:—

> the public considers the expression "National Labour Code"as a federal code intended to regulate the industrial relations in all fields of economic activity, without taking into consideration the jurisdiction of the provinces established by the Canadian constitution.
>
> The CTCC objects to such a labour code. It favours the upholding of the jurisdiction of the provinces in pursuant to the provisions of the British North America Act, and admits the justification of a national labour code, provided it will govern only the industries over which the Canadian constitution recognizes a federal jurisdiction.

The CTCC does not believe that bill 338 is a national labour code, but industrial legislation subjecting to its provisions the industries under federal jurisdiction. Of course, our organization has no intention to pretend to be an authority on constitutional matters, but since it has not heard of any opposition on that point, it supposes that the Canadian constitution has been respected.

3. Bill 338 establishes the principle of the legal existence and responsibility of all the workers' associations. Since its foundation the CTCC has always favoured this principle. Our organization thinks that the workers' associations as well as the employers' associations must begin by having a legal existence, a juridical personality, for the protection of their individual members as well as to assert their intention of respecting the laws of the country. We believe that this is a fundamental reform designed to ensure the maintenance of the social order.

4. Bill 338 rules that every collective agreement must provide an appropriate procedure intended to settle with finality the disputes which are liable to arise during the life of the said agreement. The CTCC endorses that provision of the bill and believes that the practice of holding joint conventions cannot really enter and stay in our democratic way of life unless the normal duration of the joint conventions (generally 12 months) constitutes an uninterrupted period of production, and it is the responsibility of the parties to establish an efficient procedure (without interruption of work or lockout), in order to settle, during that period, all the disputes which might arise between them. The right to strike persists when the negotiations fail and that the other procedures have been followed. This right to strike, however, as well as the right to picket, are not, in the opinion of the CTCC sufficiently protected by the Criminal Code, and the Department of Justice should undertake immediately the serious study of these questions by consulting the people concerned.

5. With this bill 338, the associations' security, supported by established customs and negotiated in many agreement, is embodied in the statutes. It is an advance worth noting. The CTCC believes that in these matters, protection of the minority associations had to be insisted upon, and the bill takes it into account. The text of the bill may, on this question, be subject to different interpretations, but the associtations will keep a watchful eye on the situation.

6. As for discharging, suspending, etc., on account of union activities, bill No. 338 leaves questions to the courts of justice and lays down the principle of reimbursement of the wages of the employee, unjustly dismissed or suspended. The CTCC is of the opinion that bill 338 should specify that the sanction applies as long as the union activities are the "determining motive" of the dismissal, the suspension, the transfer or the laying-off period. Moreover, the CTCC believes that these cases should be settled without appeal by the Canada Labour Relations Board. The ordinary procedure of the courts of justice is generally too slow, too formal and too expensive.

7. As for the other points dealt with in bill 338, experience will reveal the improvements which should be suggested from year to year, and if the industrial jurisprudence established by the Canadian Council on Labour Relations was not considered adequate, the people concerned could always submit before each session of the Canadian parliament the recommendations deemed appropriate.

8. The CTCC does not claim that bill 338 is perfect and that it expresses the views of all the labour unions of Canada. However, it is without doubt the most progressive piece of industrial legislation yet presented.

Yours respectfully,

The Canadian Catholic Confederation of Labour

by: Gerard Picard,
General Chairman,
1231 Demontigny East,
Montreal, Que.

Mr. HOMUTH: While there is no one here to question with regard to this brief, I think it would be well if the committee would note that on page 2, the first paragraph and paragraph 3 on page 2 as well, the submission is absolutely contradictory to the submissions of all other labour organizations which have been before this committee with respect to the national labour code and also with respect to the question of the legal existence of all unions.

The VICE-CHAIRMAN: Gentlemen, this brief will not be an appendix, it will form part of the record.

Hon. Mr. MITCHELL: I should like to point out to this committee that on page 2, section 4, the brief states,

> The CTCC endorses that provision of the bill and believes that the practice of holding joint conventions—

That really means collective agreements or joint agreements. The duration of the joint convention means the duration of the joint agreement. I would suggest that the French version be made a part of the record, too.

The VICE-CHAIRMAN: We will have it printed as an appendix.

Hon. Mr. MITCHELL: I think it should be printed in the report. After all is said and done, we hope that the proceedings of this committee will form a historical document.

Mr. MACINNIS: There will be a French version of these proceedings printed as well as an English version. The brief which has been presented will go in the French copy of the proceedings.

The VICE-CHAIRMAN: Both English and French copies of the brief will go into the record.

MÉMOIRE soumis au nom de La Confédération des Travailleurs Catholiques du Canada (CTCC) au Comité des Relations industrielles de la Chambre des communes en marge du bill n° 338 (Loi concernant les relations industrielles et les enquêtes sur les différends du travail).

30 juin 1947.

1. La CTCC désire tout d'abord marquer son appréciation pour la procédure suivie dans l'élaboration de la législation fédérale en matière de législation industrielle. Dès le mois d'octobre 1946, l'honorable ministre du Travail du Canada a convoqué une conférence fédérale-provinciale de tous les ministres du Travail du pays pour étudier les problèmes relatifs aux relations du travail. Au mois de décembre 1946, un premier projet concernant les relations industrielles et les différends du travail a été transmis, confidentiellement, aux principales organisations syndicales de travailleurs canadiens, solicitant leur opinion sur les sujets traités. La CTCC est informée que la même consultation a été faite avec les organisations patronales et avec les gouvernements provinciaux. Le 17 juin 1947, un projet de loi (n° 338) a subi sa première lecture, à Ottawa, et les diverses associations intéressées ont été invitées par le Président du Comité des relations industrielles de la Chambre des communes, à soumettre leur point de vue. Le présent mémoire répond à cette invitation.

2. Le bill n° 338 semble bien n'affecter que les industries au sujet desquelles la juridiction fédérale est établie, et respecte l'autonomie des Provinces. Cela est tout à fait conforme à la manière de voir de la CTCC. En effet, dans le mémoire soumis aux autorités fédérales par notre organisation, (qui compte environ 70,000 salariés), le 13 mars 1947, on peut lire:—

> Le public considère l'expression "Code national du travail" comme un code fédéral destiné à réglementer les relations industrielles dans tous les domaines de l'activité économique, sans égard à la juridiction des provinces établie par la constitution canadienne. La CTCC s'oppose à

> un tel code du travail. Elle favorise le maintien de la juridiction des provinces, conformément aux dispositions de l'Acte de l'Amérique du Nord britannique et n'admet le bien-fondé d'un Code national du travail qu'à condition qu'il régisse uniquement les industries où la constitution canadienne reconnait la juridiction fédérale.

Dans l'opinion de la CTCC, le bill n° 338 n'est pas un Code national du Travail, mais une législation industrielle assujettissant à ses dispositions les industries de juridiction fédérale. Certes, notre organisation ne désire nullement poser en autorité en matière constitutionnelle, mais n'ayant entendu parler d'aucune opposition sur ce point, elle présume que la constitution canadienne a été respectée.

3, Le bill n° 338 pose le principe de l'existence légale et de la responsabilité légale de tous les syndicats de travailleurs. Depuis sa fondation, le CTCC a toujours favorisé ce principe. Notre organisation est d'avis que le sydicalisme des travailleurs, de même que les associations patronales, doivent d'abord exister légalement, avoir une personnalité juridique, tant pour la protection individuelle de leurs membres que pour affirmer leur intention de respecter les lois du pays. C'est à notre point de vue, une réforme fondamentale pour assurer le maintien de l'ordre social.

4. Le bill n° 338 pose la règle que toute convention collective doit prévoir une procédure appropriée pour régler d'une manière finale les différends susceptibles de surgir pendant la durée de ladite convention. La CTCC endosse cette disposition du bill et croit que la pratique des négociations collectives ne peut vraiment entrer et rester dans notre régime démocratique que si la durée normale des conventions collectives (généralement, douze mois) constitue une période ininterrompue de production, et il appartient aux parties d'établir une procédure efficace (sans arrêt de travail comme sans lockout) pour régler, au cours de cette période, tous les différends qui pourraient survenir entre elles. Le droit de grève demeure lorsque les négociations échouent et que les autres procédures prévues ont été suivies. Ce droit de grève, toutefois, tout comme le droit de piquetage, ne sont pas, dans l'opinion de la CTCC, suffisamment protégés par le Code criminel, et l'on devrait, au ministère de la Justice, entreprendre immédiatement une étude approfondie de ces questions en consultant les intéressés.

5. Avec le bill n° 338, la sécurité syndicale, supportée par des coutumes établies et négociée dans nombre de conventions, pénètre dans les Statuts. C'est une amélioration qui doit être soulignée. Dans l'opinion de la CTCC, la protection des syndicats minoritaires s'imposait, en cette matière, et le bill en tient compte. La rédaction du projet de loi, sur ce point, peut peut-être prêter à des interprétations différentes, mais on peut s'attendre à une vigilance syndicale soutenue.

6. En matière de congédiement, suspension, etc. pour activités syndicales, le bill n° 338 confie ces questions aux cours de justice et pose le principe du remboursement du salaire de l'ouvrier congédié ou suspendu injustement. La CTCC est d'avis que le bill n° 338 devrait préciser que la sanction s'applique du moment que les activités syndicales sont la "raison déterminante" du congédiement, de la suspension, du transfert ou de la mise en chômage. De plus, la CTCC est d'opinion que ces cas devraient être réglés, sans appel, par le Conseil canadien des relations ouvrières. La procédure ordinaire des cours de justice est généralement trop lente, trop formaliste et trop dispendieuse.

7. Sur les autres points traités dans le bill n° 338, l'expérience indiquera les améliorations à suggérer d'année en année, et si la jurisprudence industrielle établie par le Conseil canadien des relations ouvrières n'était pas considérée adéquate, les intéressés pourront toujours faire, avant chaque session du Parlement canadien, les recommendations jugées appropriées.

8. La CTCC ne prétend pas que le bill n° 338 est parfait et qu'il rencontre toutes les vues du travail syndiqué canadien. C'est, cependant, et sans aucun doute, la pièce de législation industrielle la plus progressive à date.

Respectueusement soumis,

LA CONFEDERATION DES TRAVAILLEURS CATHOLIQUES
DU CANADA (CTCC),

par

GÉRARD PICARD,
Président général,
1231, Demontigny Est,
Montréal, P.Q.

Mr. **Beaudoin**: On page 1 and page 2 of the brief, paragraph No. 2, it says,

> Bill No. 338 seems to concern only the industries over which the federal jurisdiction is established—

Then, on page 2 the brief says,

> Bill 338 is a national labour code—

The bottom line of the same paragraph reads as follows:

> It supposes that the Canadian Constitution has been respected.

Would the minister care to repeat the statement he has often made in this connection.

The **Vice-Chairman**: May I just say this; we are having a man from the Department of Justice who will be here shortly to give us an opinion on the general constitutional question involved. The minister could give his opinion, but would you rather wait until you hear the man from the Department of Justice?

Mr. **Beaudoin**: It is not so much a legal opinion, as it is the possibility of establishing a national labour code which would govern the provinces as well. It is as to the meaning of this "national labour code".

Hon. Mr. **Mitchell**: I can answer that. There has been a lot of loose language used in speaking of a national labour code or whatever you like to call it. My intention was this, to lay down guiding principles for both jurisdictions. The provinces could follow them if they so desired. The British Columbia legislation is substantially the same as this with slight variations.

Mr. **MacInnis**: There is a lot of difference.

Hon. Mr. **Mitchell**: Basically, in Alberta, it is substantially the same. Manitoba is still operating under P.C. 1003. The province of Ontario is doing the same. When you talk about the basic right or the right to organize men into trade unions that has been followed in the legislation in Quebec. New Brunswick is still operating under P.C. 1003 in their own jurisdiction. Nova Scotia has passed an Act substantially the same as this Act.

The report of the Industrial Relations Committee of last year said we should have what would be called a national code with due regard to the constitution. As I have often said in the House of Commons you cannot break a law by agreement. The respective provinces, and this should be said very clearly, at the meeting last fall wanted their jurisdiction with respect to labour matters returned. I think my memory is fairly clear on that subject. It is not the intention of this legislation to interfere with the normal jurisdiction under the British North America Act, but the intention was to establish nationally by law, for the first time, the right of men to belong to trade union organizations.

Mr. Beaudoin: Therefore, when the CTCC seems to express the view, it is the fact that bill No. 338 concerns industries over which the federal jurisdiction is established.

The Vice-Chairman: Mr. Driedger, Senior Advisory Counsel of the Department of Justice is here now and will give us his views on this particular bill No. 338.

Mr. Driedger, Senior Advisory Counsel, Department of Justice, called:

The Witness: I have a short statement here which I will read.

> Normally, legislation respecting labour relations falls within the class of property and civil rights in the province and is within the exclusive competence of provincial legislatures. This point was expressly decided in the case of Toronto Electric Commissioners v. Snider (1925) A.C. 363; see also the Labour Conventions case (1937) A.C. 326 and the Employment and social Insurance case (1937) A.C. 355. In the Snider case the Privy Council considered the Industrial Disputes Act of 1907, which was in general terms, and held that this legislation was ultra vires; that it did not fall within any of the enumerated heads of s. 91 of the B.N.A. Act and could not be justified under the initial words of s. 91 which authorize parliament to make laws for the peace, order and good government of Canada.
>
> 2. *Jurisdiction of Parliament*
>
> (*a*) Parliament has jurisdiction to deal with labour matters as incidental to proper legislation within its assigned fields. For example, under s. 91 of the B.N.A. Act, parliament has exclusive legislative jurisdiction with respect to navigation and shipping and also with respect to ferries between a province and any British or foreign country or between two provinces, and as incidental to valid legislation under these heads parliament could legislate with respect to labour relations affecting them.
>
> (*b*) Secondly, parliament may enact legislation with regard to labour relations with respect to industries and undertakings falling outside s. 92 of the B.N.A. Act. For example, under s. 92(10) certain works and undertakings are excepted from provincial jurisdiction. Aeronautics and radio broadcasting appear also to be outside the provincial sphere. See the Aeronautics case (1932) A.C. 54 and the Radio case (1932) A.C. 304.
>
> (*c*) Finally, parliament may, in special circumstances, legislate with respect to labour relations under the initial words of s. 91, namely, for the peace, order and good government of Canada. This was done during the war. The Canada Temperance case (1946) A.C. 193 is the most recent decision of the Privy Council on the authority of parliament to legislate on this ground. Viscount Simon said that the true test must be found in the real subject matter of the legislation; if it is such that it goes beyond local or provincial concern or interests and must from its inherent nature be the concern of the dominion as a whole then it will fall within the competence of the dominion parliament as a matter affecting the peace, order and good government of Canada though it may in another aspect touch on matters especially reserved to the provincial legislature.
>
> These are general principles and there may be difficulty in applying them to particular cases. No exact test has been laid down as to when or in what circumstances a matter goes beyond local or provincial concern but it is clear that some special circumstances must exist. The authorities are against the view that parliament can in normal times cover the whole field of labour relations in Canada. In the Snider case the point was

> expressly decided and although the doctrine as expounded by Viscount Simon in the Canada Temperance case is somewhat broader than indicated in the Snider case, it is to be noted that nowhere did Viscount Simon suggest that the Snider case was wrongly decided. Further, authority to legislate on this ground in respect of labour matters was also rejected in the Labour Conventions case and in the Employment and Social Insurance case. In the Labour Conventions case Lord Atkin called attention to such phrases as "abormal circumstances", "exceptional conditions", "standard of necessity", "some extraordinary peril to the national life of Canada", "highly exceptional" and "epidemic of pestilence" and said that that case was far from the conditions which may override the normal distribution of powers in ss. 91 and 92.

The VICE-CHAIRMAN: In giving his statement, the witness left out the references to the cases. These references will be included in the report so that you who may wish to read the cases may do so. I believe the legal men are all acquainted with them.

Are there any questions, gentlemen, or do you wish a little time to digest the material.

Mr. HOMUTH: When we are considering the clauses of the bill, Mr. Chairman, the CCL made quite a point about amending the British North America Act. Likely we will get into a lot of discussion when that clause is up for consideration in the committee. It might be well if we had a chance to read this material very carefully in the record.

I might just ask this; when are the records of the various meetings going to be printed? We have only received one printed copy so far.

The VICE-CHAIRMAN: The minister has kindly asked for priority for all our printing. The intention is to complete the hearings to-day and to try to give you to-morrow and Saturday, the week-end, to digest the material. Then, we can start back to work on Monday, either Monday morning or Monday afternoon. We probably will not be able to sit on Tuesday as we will not have this room and many of us will want to go to the External Affairs Committee session. At least, that is the general idea.

Mr. HOMUTH: We will sit on Monday and not Tuesday, and come back again on Wednesday?

The VICE-CHAIRMAN: That is the general idea. We will give you the week-end to digest this material.

Mr. JOHNSTON: There is this about it; if there is any chance of proroguing on this Saturday, you are going to have to report this bill before next Saturday. Therefore, this bill should be reported on the 9th or 10th at the latest if we are going to conclude on the 12th.

The VICE-CHAIRMAN: I do not know the decision to which the leaders came, but this matter of closing the House is a very indefinite matter. I have no idea about it. If the Prime Minister tells us we must close on the 12th—

Mr. MACINNIS: He did not tell the Liberal members that they must close on the 12th. At least, one would judge that from the way they carried on. I guess that is all off.

Mr. JOHNSTON: Were you at their caucus?

Mr. MACINNIS: No, I was listening to them. I saw the Prime Minister yesterday and he certainly did not tell the caucas what he told us.

Hon. Mr. MITCHELL: Let us put the record straight regarding this talk about Liberal members. I have been kicking around here for many years and it has not changed a great deal in that time. The same speeches I heard 17 years ago are being made to-day except that they are being made by different people.

Some people make more speeches than others. This happens every year, let us be frank about it. No one party is to blame for the delay in the proceedings in the Chamber. It is unfortunate, very unfortunate. Frankly, from my own point of view, I think we could do a better job in three months than we are trying to do in six. If people would not talk on everything under the sun, when many of the things about which they talk could be settled in five minutes by a letter to the minister.

Mr. MacInnis: That is not my experience.

Hon. Mr. Mitchell: That is right, and I am convinced of that. May I say this, in a personal way, I have not had a holiday in the sunshine in Canada for the last six years. I guess the same thing could be said for most of the members around this table. I do not think the good Lord meant us, as the seasons are in Canada, to stick around here all summer. It is not human to begin with.

The Vice-Chairman: Well, gentlemen, we have disgressed just a little. We have before us at the present time bill 24.

Mr. Coté: Before we release the witness, I should like to clear up a point in my mind. We discussed the advisability of having an official of the Department of Justice to assist us in our deliberations on bills 338 and 24, but more particularly on bill 338. Now, I am sure that the examination of this witness would be more proper as we go through the bills clause by clause. I wanted to make sure that you had made some arrangement for an official of the Department of Justice to be with us when we examine this bill.

The Vice-Chairman: The minister tells me this gentleman will be available to us for drafting or for whatever else we require.

Appendix B from the CCL has not arrived as yet. It will probably arrive to-morrow. It was to go on the record. It is merely informative material and it will help us a bit, I am told.

We have before us now bill 24. This is another matter which was referred to this committee. We have notified the Department of Transport that we were proceeding with it. We notified them last night and again this morning. Mr. Knowles, the original sponsor of this bill is here and I think perhaps just to bring the committee up to date, we should have a short statement from Mr. Knowles in respect to the bill. Most of you recall it was adopted by the House of Commons. Then, we will hear the representatives of the railways.

Mr. Knowles: Mr. Chairman, I shall endeavour to be as brief as I can with respect to this matter because the subject has been before the House of Commons a good many times during the last several years. The purpose of the bill is to prevent the recurrence of something that has happened several times and in particular at least twice in Canadian history. The first main occasion I refer to was in 1910 when there was a strike on the Grand Trunk Railway, the settlement of which did not include the restoration of the pension rights to those employees.

Mr. Homuth: Did you say 1910?

Mr. Knowles: Yes.

Mr. Homuth: I think it was 1908.

Mr. Knowles: No, 1908 was the Canadian Pacific strike. There were other occasions, but I am dealing in the main with two. The problem that arose out of the 1910 strike was taken in hand by a number of people, principally by the present Prime Minister when he came back into the House after his election to the leadership of the Liberal party in 1919. He took the matter up as the leader of the opposition and made what appears to me, from reading the report, a convincing case that these men should have their pension rights restored. In a few years Mr. King was Prime Minister and he saw to it that the complaint he had made, as leader of the opposition, was rectified, and the pension rights of those 1910 men were restored in about 1922. The restoration was complete, including payments to the estates of men who had passed on.

Now, the other outstanding case is that of the Winnipeg general strike in 1919 in which a large number of Canadian Pacific employees became involved. There were some other strikes in 1918 and there were also a few other strikes in 1919 with the result that a number of Canadian Pacific men were involved, and they are now stretched across the western part of the Canadian Pacific system from Fort William to the Pacific coast. A good many of them have died in the meantime, but the fact is that all of the men who were over forty when they went back to work after the 1919 strike have not been permitted to re-enter any pension plan—either the one then in existence or the new one that was later brought in. In addition to the fact that the men who were then over forty were not permitted to enter any pension plan, the men who were under forty had to start all over again, and any rights which they had earned prior to 1919 were cancelled. The men under forty were permitted to re-enter, but only on the basis of starting anew.

Now, Mr. Chairman, it seems to me from what I can learn from my legal friends that the issue arising out of 1919 can hardly be dealt with by legislation; it is a matter for a negotiation between the men and the company or it is a matter for consideration by a royal commission; and I have been asking for that. There is also a report from an official of the Department of Labour, Mr. H. Johnston, recommending to the government in clear-cut language that such a royal commission should be established. The issue of the past is by itself, and in my view is not covered by legislation which I have proposed in bill 24. I have only dealt with the past for two reasons: one, to give you an example of the kind of thing that I feel should be prevented happening again and also so as to draw a line of demarcation so that you will know that in asking that bill 24 be considered it is not my thought that that is retroacive, that it covers the men of 1919. It is a separate matter.

Mr. Johnston: Did you not suggest that bill 24 be included in bill 338?

Mr. Knowles: I shall come to that in a moment. I have tried to clear the ground as between the past and the future. The incidents I have given are in the past and they ought to be dealt with in other ways.

Now, it is to prevent that happening again that I proposed the principle laid down in bill 24, and I shall come to what Mr. Johnston has mentioned in a moment.

My original proposal as contained in bill 24 was to the effect that the appropriate section of the Railway Act be amended. Section 122 of the Railway Act is the section that gives the directors of railway companies the right to set up pension plans. The right is pretty broad; and my proposal, as incorporated in bill 24, was to the effect that a proviso be added to that right to establish a pension plan. The proviso would read:—

> Provided that in the administration of any railway retirement or pension plan, leave of absence, suspension, dismissal followed by reinstatement, a temporary lay-off on account of reduction of staff, or absence due to an industrial dispute, strike or lockout, shall not disqualify any railway employee from any retirement or pension rights or benefits to which he would otherwise be entitled.

Now, if that clause could be added to that section in the Railway Act, I think the effect is quite clear; it would simply mean that any of the pension plans being administered by the railway companies would have to take cognizance of that proviso. I have the Canadian Pacific one in my hand, and rule 8(*a*) provides that men are eligible for pension rights only if their last entry into the service occurred before the age of forty. The same rule makes it possible for the company to declare absences for various reasons a break in service. In other words, the same thing can happen again that happened before with regard to absences for various reasons. Admittedly, the company could declare them not to be a break in service; but the company could do as was done before, and in such cases the men who were over forty would not be in the plan. The men under forty, while they would go back into the plan, would lose their earlier pension rights.

There is one distinct difference between the situation in 1910 and 1919 and the situation to-day. In those days the railway pension plans were what were known as non-contributory; that is, the men did not have deductions made from their pay to be placed in the pension fund. The men argued that they were contributing through their work, but I think we all understand that. At the present time pension plans are contributory. The men make payments out of their pay cheques and the company adds an amount thereto, and the pension is worked out on an actuarial basis in the light of the contributions. I believe it is compulsory in both of the main systems.

However, the clause to which I have referred requiring that the last entry into the service be not later than the age of forty is still there, and there is also still the clause in the Canadian Civic Pension Plan which provides that if the service of an employee to a number of the pension plans is terminated for any reason an amount equal to the contributions made by the employee will be refunded to him. That is all. There is no interest and no further pension rights. That means that the combination of these clauses makes it possible for a company to rule that absence due to a strike or other things is a break in service. That break in service is, in other words, a termination of employment for the time being even if there is reinstatement, and that termination ends that employee's connection with the pension plan. All he can get back is the contribution that he himself has made. If he is over 40 he cannot re-enter the plan.

Now, the ideas of people generally have changed a great deal with respect to this matter since 1919. We are all conscious of the right of employees in industry to protection for their old age. The whole concept of social insurance has moved a long way since 1919; and I think that around this table to-day there surely is not anyone who will deny that every possible protection—legal, of course—should be given to employees in industry.

Now, I wish to deal with the question raised by Mr. Johnston and then I will sit down. He asked whether I had thought of having this principle written into bill 338 rather than keeping it as an amendment to the Railway Act. I want to say that would be wholly acceptable to me. In fact, I think it would be even better, because it would go a little bit further. As I suggested in bill 24 it protects the pension rights only of railway workers; if we put it in bill 338 it would go a little bit further in that bill 338 covers a few more employees than railway employees. I think it is better because it establishes this matter as a principle with regard to labour relations rather than as a matter with respect to the administration of railways.

Mr. Johnston: Exactly so.

Mr. Knowles: If the committee could not see fit to recommend that this principle be incorporated by some amendment into bill 338 it would meet the situation and I would be most happy to accept it.

Mr. Johnston: I agree to that too.

The Vice-Chairman: Gentlemen, you have had a very clear outline of what this bill is about and now we will hear from Mr. Rosevear, who was here yesterday, and who is chief counsel for the Railway Association of Canada.

A. B. Rosevear, K.C., recalled:

The WITNESS: Mr. Chairman, I do not want it to appear that I am riding two horses, but at the present time I am representing the Canadian National Railways because in a matter of this kind I cannot speak for the Canadian Pacific Railway or any other railway which has a pension plan. You will readily understand that when I say that pension plans are not uniform and, therefore, we have to explain our position separately.

Now, I wish to point out a few pitfalls with respect to bill 24. It may be that the committee will decide to adopt the suggestion which is made, that some of the principles involved in this bill be inserted into bill 338 and, therefore, perhaps it is not necessary to discuss bill 24 in detail. However, in case your thoughts are again turning to bill 24 I think I had better state some of the pitfalls which I see in this bill.

I do not think, from a legal standpoint, that it is a good idea to include a matter of this kind in the Railway Act. It seems to me that is not the place for it, and I would explain that in this way, that the Canadian National Railways at the present time are administering three pension plans. We are not doing that because we want to, but because we have fallen heir to some pension schemes which existed prior to the organization of the National Railway system. For instance, we have the old Canadian government railways' pension scheme which we are administering under a special Act of the parliament of Canada. We also have the old Grand Trunk superannuation fund which we are administering also under a special Act of the parliament of Canada; and I might mention that our main scheme—the Canadian National Railways pension scheme—has for its legal basis also a special Act of parliament. Now, from a legal standpoint I think that the lawyers present will agree with me that the general Act does not override the special Act unless it specifically said so; and secondly, I do not think bill 24 would be effective, because none of our pension schemes are set up under the Railway Act but rather under special acts of the parliament of Canada. Now, when we come to that, I do not think that in any event any attempt should be made to interfere with our pension schemes unless an examination is made of the special acts under which they are operated, and those special acts give us certain powers and duties.

That is the legal side of the matter. I throw out those thoughts for your consideration.

Turning now from the legal side to the principles in the bill 24, I might mention that in as far as the Canadian National Railways are concerned we, of course, do not consider that when a man is absent with leave that his service is broken. If he is absent with leave he is absent with leave and if he returns to duty his pension rights are not affected. The only thing that might happen—I might say in parenthesis that I have here Mr. Hawken, our assistant secretary and staff registrar and he will be able to answer any questions you wish to ask about the details of our pension scheme—I think I am correct, Mr. Hawken, there might be a case of leave of absence where a man might not be paid—an hourly man.

Mr. HAWKEN: Many of them.

The WITNESS: Yes. The effect of that would be that if he were contributing to the pension scheme, while he was on leave of absence he would not be contributing anything because he would not be receiving wages. We only allow a man to contribute when he is receiving wages.

Mr. HAWKEN: Pardon me. He may contribute but we will not match it.

Mr. HOMUTH: Let us clear that up. Supposing he contributed, and contributed, also the amount you would ordinarily match him—

Mr. Hawken: No, sir, because he is limited to contributing not more than 10 per cent of his wages, and he allocates once a year the rate at which he will contribute, and he sticks to that; he will not be allowed to contribute more.

The Witness: The matter of contributions to the pension scheme is figured out, of course, on an actuarial basis. The man contributes so much and the company matches his contribution up to a total of 5 per cent of his wages, and it seems to me that no attempt should be made by parliament to do anything which would impair in any way the actuarial basis of the pension scheme. I hope I make my point clear. If you do something which costs money and there is no provision for it, you impair the actuarial basis of the pension scheme.

Mr. Timmins: For all the men.

The Witness: Yes, for all the employees. Let me make it clear that we do not mind the provision about leave of absence in the pension scheme because we do not consider leave of absence when a man takes it as a break in service.

Mr. Hawken: It is provided for.

Mr. Johnston: What would happen in the case of a lockout or strike? Would you declare that as a leave of absence?

The Witness: I am coming to that. I am dealing with leave of absence which is the thing mentioned in bill 24.

Mr. Knowles: Should I interject a question here or should I wait?

The Vice-Chairman: Please let us follow the same procedure which we followed before and get a coherent case.

The Witness: The next thing in bill 24 is, "suspension, dismissal followed by reinstatement . . ." Mr. Chairman, I think that is a dangerous provision in the bill from the standpoint of the employee. I will say this to the committee that in the C.N.R. service if a man is reinstated he is reinstated. That means that in some cases, practically all cases, his prior service is granted to him. However, I think that some consideration should be given to this, that there should be a distinction in a pension board with respect to reinstatement because in some cases a man has been suspended and has been dismissed for a serious cause, and it might be necessary to take him back only under the understanding that his prior service will not be granted.

Let us take an example. Suppose that he has been out of the service for more than a year after having been dismissed and on compassionate grounds we take him back, we should not have to, unless we wished to, restore to him his prior service with the company. There is no discipline then in that matter. As far as the C.N.R. is concerned, when we reinstate a man, in 999 cases out of 1,000 we would grant him his prior service.

Mr. Hawken: Yes.

The Witness: Let me then turn to what I stated a moment ago about the provision being dangerous for the employee. If the railway companies were bound, in every case, no matter how serious the offence had been, to restore to a man who had been dismissed his full service they just would not reinstate these men. Now, we have had many cases in the C.N.R. of a man having been dismissed for a serious case but having a large family and on compassionate grounds we have taken him back; but if parliament said, "If you take him back certain penalties will follow," we would not take him back. I think that is a dangerous provision in a bill, and I would suggest seriously to the committee that reinstatement should be left to the discretion of the pension boards and should not be a mandatory provision in the bill because it will work a hardship in the end.

Now, the matter of temporary lay-off on account of reduction of staff would not worry us at all. We do not deprive a man of his prior service because of a temporary lay-off. If he is laid off temporarily and he is called back to work when there is work to be done it is looked upon as continuous service; so that would not seriously concern our company.

The next point has to do with a matter which is controversial—the question of strikes. I think you will agree that when strikes are settled the settlement agreement now anyway usually contains a provision whereby the prior rights of all the men who had been out on strike are to be restored: in other words, reinstatement with full rights. The settlement agreement usually contains a clause like that, and there always is in the settlement of an industrial dispute, namely, that the men must come back to work within a reasonable time. There is no provision like that here. There are instances where strikes have taken place and some of the men have gone out and got other jobs, and they think they will stay on those jobs for a while, and a considerable time goes by and they lose the jobs and come back to the railway and want to be reinstated. There should be some saving clause in that connection; we should not be required to restore a man to full service if he does not return within a certain time. If you read the bill you will see that there is no saving clause with respect to that. As a matter of fact, with regard to strikes it seems to me that if any provision is going to be written into the law about restoring men to full rights after a strike it should have that saving clause, and it also should be provided that the strike will be, say, a strike which is legal, comes within the provision, say, of bill 338. I do not think we should be necessarily required to restore a man to full service when he has gone out on some wildcat strike which is not authorized by the leaders.

I do not think there is anything more I can say about that. I think, perhaps, if there is a certain amount of saving clause covering the matter it would not work a serious hardship except this, that again you are taking away the discretion of the pension board.

Now, just on that point, I wish to mention so that the committee will have it clearly in mind that so far as the C.N.R. is concerned, first of all, the contributory part of the pension is not compulsory. The company in any event grants a gratuitous pension to every employee from the highest to the lowest of $300 a year. That is a basic pension, a gratuitous pension. It does not matter how high a man's pension is or how low, the basic pension is $300 a year. If a man wishes to get more than that he must contribute; but he is not compelled to, and the company will match his contributions up to 5 per cent of his wages.

Now, I mention that because, unlike the C.P.R., our scheme is not compulsory, and of course that $300 a year, when you have as many employees as the C.N.R. has, amounts to a large sum of money per annum. It sounds little, but there is no contribution toward paying it and it is a large sum per annum.

The other matter I wish to mention is that our pension board consists of seven members, three from labour and four from management; and consequently I would say that board is an impartial board, a board which is capable of dealing with all questions brought before it, and a board in which the various points of view are expressed; and I would regret very much if parliament saw fit to take away entirely the discretion of that board.

I noticed in the press that there were some remarks made about our pension scheme in the house yesterday, and I would like to say in that regard that when you have thousands of men on pension there are bound to be some who think they have some injustice done to them; but generally speaking that board with its representation of three from labour and four from management deals as fairly and impartially with every case that comes before it as it is humanly possible to do.

Now, there is one other thing I would like to mention in this bill and that is from the legal standpoint. I do not think the expression, "to which he would otherwise be entitled" is a good one. It has not got the retroactive effect Mr. Knowles suggested he did not wish; namely, it has not got the effect of protecting the men who, in 1919, went out on strike. However, it has the effect of saying, "to which he would otherwise be entitled". Does that mean, for instance, that a man can come along and say, "If I had not been on strike or if I had not been dismissed I would have been entitled to contribute out of my wages so much money during that period I have been away. Therefore, now I have the right to make that contribution," and the company would then have to match it.

You see, a situation like that would be very unsound. We would not know where we were from one day to the next. It seems to me some other expression should be used than the one, "To which he would otherwise be entitled". It is not to what a man would otherwise be entitled, it would simply be that his prior service would be restored. We are not talking about the financial side of it except as his prior service gives financial benefits. Mr. Hawken can perhaps explain that a little better to you than I can. I am correct, am I not, Mr. Hawken in saying the first thing to be considered is the man's service?

Mr. Hawken: Yes.

The Witness: Therefore, his prior service is guaranteed. He is entitled to continuous service from the day he started working for the Canadian National.

Mr. Hawken: We put a bridge over the gap.

The Witness: There is a bridge put over the gap. However, that does not imply that any employee has the right to make retroactive payments to the fund.

I am sure we will be available to answer any questions and to explain more fully, if the committee so desires, the operation of our pension scheme. At this time, I do not think I have anything further to add, Mr. Chairman.

The Vice-Chairman: Gentlemen, there may be some questions you wish to ask. Mr. Hawken will also give evidence. Do you want both stories now? Do you want anything he can add to it now and then have the whole picture before you ask questions?

Some Hon. Members: Yes.

Mr. Hawken: Perhaps I can round out a few of the points Mr. Rosevear made. I think Mr. Knowles must have had a copy of our pension rules and regulations in front of him when he drafted this bill. It looks as if it had been taken from these rules and regulations.

Mr. Knowles: That clause is exactly similar to the Canadian Pacific rule.

The Vice-Chairman: Mr. Knowles has a reputation for reading the rules and regulations in the House of Commons.

Mr. Hawken: Our rules do provide for the restoration of continuity of service in the case of an individual discharged or suspended if that individual comes back and is approved by the head of the department, taking into account the offence for which he was dismissed and the time he was out of the service. As Mr. Rosevear said, of course, the company has discretion in such matters.

It is our belief that the company should have discretion because there are times when we say—we have done it on quite a number of occasions—we have taken a man back solely on compassionate grounds. A man's family is alleged to be starving so we take him back. Now, the discipline which was intended was that the man would be through, cut off from his rights and lose his job. However, we gave him a job and to some extent reinstated him.

Of course, Mr. Chairman, those members of the committee who have had to do with labour matters will realize that in organization work, reinstatement generally means putting a man back in his slot on the seniority list. It does not necessarily mean reinstating a man to the previous good standing he had in the company's service, with all the benefits he previously enjoyed. In reinstating a man in organized labour, in the railway or anywhere, you are really putting the man back in his slot on the seniority list.

For instance, if we dismissed a conductor for knocking down fares, which is the term we used on the railroad for confiscating fares—

Mr. McIvor: Or for the G rules?

Mr. Hawken: Not so much for G rules now. Liquor commissions throughout Canada are doing too big a business these days. The G rule is not as bad today as it was 40 years ago. Suppose we dismissed a man for knocking down fares, and we had lots of men in this category in days gone by. This is a rather serious offence. We know railway companies who have taken the man into court and convicted him for knocking down fares. I cannot remember that we convicted one, but we have fired them.

Here is a man with a large family who is a conductor. He will be 50 or 60 years of age because a man does not become a conductor when he is young. He has to serve his apprenticeship on the rear end and he certainly does not become a conductor when he is a young man. He is caught knocking down fares and is dismissed. Then, representations are made to us that his family is starving; his wife is sick and two children are in the hospital, one suffering from tuberculosis. Now, we take that man back on compassionate grounds. If we gave him a job in train service, he would have to go back to the bottom and become a brakeman. Nine times out of ten, he could not get in as a brakeman because he would be too old to become a brakeman anyway. Therefore, with the consent of his fellow employees he is reinstated. He has the right to go back as a conductor but that does not say we recognize his right to claim previous service rights, pension and so on. To that extent, the discipline stands.

In so far as strikes are concerned, we have practically forgiven all strikes. We had a couple of wildcat strikes, but we said that the great majority of the people, there were not very many people involved, were rather badly advised. They did not know what they were doing. The directors have wiped that out. We have not any strikes to-day. As Mr. Rosevear has said, some of the people did not come back after the strike was settled. They had jobs elsewhere. Perhaps their actions during the strike were not very good so they were a little frightened as to what might happen to them if they came back in the vicinity. Later on, they showed up and asked for a job. We needed that man and we gave him a job, but we did not reinstate him to good standing in the company's service. We have not got one in a thousand cases like that, sir.

In so far as the other conditions are concerned, leave of absence speaks for itself. If you are in the army, you are given leave of absence. You are not disciplined when you come back. You were on authorized leave. When you come back the time you were away may or may not count as if you were in railway service. It depends on why you were absent. If you were ill, on leave of absence because of personal illness, up to twelve months we give you credit for the service as if you were actually running a train or doing something else. You may be absent in that case for twelve months and you would still be in good standing when you came back.

An injury may be your fault or it may not. It may be due to carelessness. However, we are prepared to give you credit for all the time you are away up to five or ten years. We take the view that usually it is not your fault. We grant leave of absence for personal reasons. We have men on leave of absence sitting in the House of Commons. We give them leave of absence and they come right back to the spot from whence they came. We do not credit the time they are away attending to personal affairs or private business, so to speak. To make myself clear, this does not interfere with a man's over all continuity of service. Each time, we put a bridge over the gap and his service goes back to the beginning.

As Mr. Rosevear said subject to the qualifications about this proposed amendment to the bill, we do not find very much harm in the bill. We do think there should be some discretion left in the hands of management. We do think it is a dangerous principle to say that a man shall have all his rights if he is reinstated. If you are going to take away the discretionary rights of management I can quite easily visualize a situation in which some people will get fired where, ordinarily, they would be able to return and have their rights restored, but the railroads and other employers will say, "if this principle is applied we will not take them back."

Hon. Mr. MITCHELL: In those casese of which you spoke, the problem is dealt with by this committee on which there are representatives of the employees and employers?

Mr. MACINNIS: The pension board?

Mr. HAWKEN: Yes, sir, our pension board consists of three members, two of which are representatives of organized labour. These representatives are chosen every year by the various unions operating within the Canadian National Railway system.

Hon. Mr. MITCHELL: I suppose the fourth one is the chairman of the board?

Mr. HAWKEN: Yes, he is the vice-president in charge of finance in the company.

Hon. Mr. MITCHELL: You ran your sentences together during your statement when you spoke of the man who went to war. This man received full seniority rights, they were unimpaired?

Mr. HAWKEN: Yes, sir, not only did these men receive full seniority rights unimpaired, but war service counts as if it were railway service I think that is in your bill, the reinstatement of Civil Employment Act. There again the reinstatement of Civil Employment Act seems to have been written around our circular which was put out in 1939 and which provided for all that. We did the same thing in the war of 1914-1918.

Hon. Mr. MITCHELL: We had the advantage of it during the deliberations of the National Labour Supply Council. Arthur Hills and George Hodge of the Canadian Pacific were members of the board. It was the situation arising out of the experience of the railroad upon which that Act was framed.

Mr. HAWKEN: I might add in connection with war service for the last war, if any man was eligible to contribute to the pension fund and because of having served in His Majesty's forces was unable to do so, we grant him a free pension of 1/12th of 1 per cent for every month he was in His Majesty's service without any contribution from him whatever.

Mr. MCIVOR: Mr. Chairman, the Conservative member for Winnipeg North Centre—

Mr. KNOWLES: C.C.F.

Mr. MCIVOR: Well, you have been very conservative in regard to this bill and it was for that reason I gave you that name. I supported this amendment in the House and I appreciated the gesture of the minister when he referred it to this committee. I am not a lawyer, but perhaps I have a little bit of sense. I have a lot of sympathy for a man who loses his pension. I have not been satisfied with the pension scheme of the Canadian Pacific or the Canadian National for this reason: I have seen men serve up to within two months of receiving their pension who have simply been cut off. They did not receive a five cent piece. These men had to go to labouring jobs. I think this situation should be corrected.

There are other workers besides railway workers. If the good things are taken from this bill and incorporated in a labour code, I will be very well pleased. I worked in a railway divisional centre when there was a strike. I did not take very much part, but I tried to throw oil on the troubled waters. In 1908 or 1909 there was a strike on the Canadian Pacific. I was terribly disappointed when some government official came and bought off the labour leaders. The men lost the strike. There is no argument about that because I was right there in the town of Laramie at the time. In 1919, when some of these men who had served 15 or 20 years lost their pension, I think they were unduly punished. If there is anything that will prevent that, Mr. Chairman, I think the minister of labour will do his best to see that something is done. I will support it.

Hon. Mr. MITCHELL: I mentioned Mr. Hodge and Mr. Hills and I should have mentioned Mr. William Best and also Mr. James Somerville, who were members of the National Labour Supply Council.

Mr. HOMUTH: I was going to suggest in view of the representations made by the representative of the railways we can see that, while the House and this committee has more or less given its blessing to the principles of this bill, there are a lot of involvement which have arisen this morning. Even before the meeting opened I was talking to the Chairman and I realized that in the bill as it is now written, for instance, there should be some authority which would state whether or not a strike or a lock-out was legal or illegal. There may be some amendment needed. It may be that this might become part of the general bill. I would suggest very strongly that it might be well, if we are going to meet at four o'clock anyway—

The VICE-CHAIRMAN: Not to-day, we hope to conclude this morning.

Mr. HOMUTH: Conclude discussion of this bill this morning?

The VICE-CHAIRMAN: Yes, we hope to do that.

Mr. KNOWLES: May I say, first of all, that I appreciate the attitude taken by Mr. Rosevear and Mr. Hawken. It has been their job to take the other side and try to show the difficulties or pitfalls, to use their words, in connection with this bill. Even so, they have revealed a desire to do what they feel is the best thing for the pension rights of all the workers concerned; in this case, all the railways workers. I want to say, too, that I appreciate the attitude which seems to prevail in the committee as well, namely, that a few minor faults in the bill are not to be taken as a reason for throwing it out but rather we should consider the best way of incorporating these principles into legislation. It seems to be generally accepted that the best way to do that is by including it in some manner in bill 338.

While I am on my feet, I should like to make a few remarks by way of comment on the remarks made by the gentlemen representing the Canadian National. With regard to the first point, namely, that there are legal questions to be considered before one amends the Railway Act in this way, I think the point is perhaps well taken. The point was that this kind of legislation would be better somewhere else than in a general Act such as the Railway Act, particularly in view of the Acts of parliament which govern the Canadian National pension schemes. I believe that supports the general feeling of this committee that we should, perhaps, consider writing this principle into bill 338 rather than amending the Railway Act.

With respect to the position that both Mr. Rosevear and Mr. Hawken took about the practice of the Canadian National, I must point out that one has to consider not just the practice of the converted but the things the sinners can do under the law as it reads. The gentlemen are perfectly right in saying that I drafted my bill with the Canadian National and Canadian Pacific pension plans before me. Some of the wording I took right out of those plans and put into this bill.

These gentlemen have gone to great length to point out that the company does not practise the denial of continuity of service to people who are out on leave of absence or in certain cases of dismissal followed by reinstatement. This is a matter which is left to discretion. I have the Canadian Pacific rule in front of me and, in this case, the Canadian National rule has identical wording.

> Provided, however, that leave of absence, suspension, dismissal, followed by reinstatement within one year or temporary lay-off on account of reduction of staff need not necessarily be treated by the committee as constituting a break in the continuity of service

Now, two differences are noted between that and the proviso I propose to add to the Railway Act. The first one is that there is no reference to strikes or lockouts. The second point is that the rule in both pension plans merely says that absence due to these various causes may not necessarily be treated as a break in service, but this means that they can be treated as a break in service. There is not even that protection against absence due to a strike.

I would admit that some discretion should be allowed to the pension board. I submit that you should not make a provision that is likely to have an adverse effect on the whole mass of employees simply to take care of the few exceptions. Both of these gentlemen referred to compassionate reinstatement. I confess that in those circumstances where the reinstatement is on compassionate grounds, the place to take care of that is in the provision governing reinstatement. I do not think you should make a general rule that persons reinstated have to have some discipline continued, must still suffer some discipline. There will be cases where that reinstatement has been effected because the employee has been able to establish the fact his dismissal was unjustified. Certainly, in those cases he should get back his original rights.

The VICE-CHAIRMAN: I do not like to interfere with you Mr. Knowles, but the general idea was that we would question the witness now and leave our arguments and observations for a later time when we have all the evidence before us. Some of the other members may have some questions they desire to ask while we have the witness here. Could we leave the argument out for the moment and merely ask questions for the purpose of clarifying the position.

Mr. KNOWLES: That is perfectly satisfactory to me, but I thought you said we were going to clear the thing up now. May I just ask the two representatives of the railways if I am not correct in what I have said about dismissal and these things, that the rule reads as I have indicated. It may not necessarily be considered as continuous service?

The WITNESS: Yes, that is correct.

Mr. JOHNSTON: In regard to strikes, would the Canadian National cancel the reinstatement of pension rights following a legal strike?

Mr. HAWKEN: We have not done so.

Mr. JOHNSTON: Would they or could they?

Mr. HAWKEN: That is a matter for the board of directors at the present time.

Mr. JOHNSTON: If a strike were declared a legal strike, then the board itself could decide. Suppose a strike had been declared a legal strike. Then, it would be up to the board to decide, from their point of view, whether a man would be reinstated or not.

Mr. HAWKEN: Yes, sir, they would probably decide to grant that. If we had a strike in which everyone participated, they would probably bridge it for everybody.

Mr. JOHNSTON: Do you not think there should be something in the Act whereby when a strike is said to be a legal strike automatic reinstatement should follow without any decision from the pension board at all?

The WITNESS: My difficulty with that, as a lawyer, is that I find it very difficult to discover a proper definition for what is a lawful strike and what is not.

Mr. JOHNSTON: Would not the conciliation board decide that?

The WITNESS: I do not know whether the department will agree with me or not. The situation with regard to strikes is not as serious as it used to be, Mr. Chairman, because I do not think you would find a union agreeing to settle a matter without writing into the contract of settlement that all the men would be reinstated.

Mr. MACINNIS: Without discrimination.

The WITNESS: So, I do not think it is quite as serious now as it was some years ago.

Mr. MACINNIS: At a time when the unions were not quite as strong as they are now.

The WITNESS: What I am getting at is this; I do not like an omnibus clause in a bill which says you have to reinstate some people out on strike without some protection in the case of wildcat strikes. My difficulty, as a lawyer, is to try to define a legal strike.

Mr. JOHNSTON: Would not the government, the conciliation board or the national war labour board decide whether it was a legal strike? It would not be up to you or the company or the union to decide, but the National War Labour Board would decide whether it was a legal strike or not. Once it was declared to be a legal strike why should not the pensioner be allowed his full rights?

The WITNESS: May I say this; would it not be the duty of a committee drafting a bill to decide whether or not that could be defined? I find difficulty in defining it. I think I can say this, as a matter of policy now, I would be very much surprised if our directors did not reinstate men after a legal strike or after a strike had been settled. What we understand by a legal strike is a strike that has been authorized by the leaders of the organization.

By Mr. Johnston:

Q. You say it is the general practice of your company to reinstate these people in any event?—A. It has been.

Q. There would be no objection from your organization to putting it in the Act?—A. Provided it is not made mandatory so that all strikes are covered.

Q. You spoke a while ago of the fact that sometimes during strikes or lock-outs men secure other jobs and stay away for a long period of time. Under the proposed amendment, I would take it that as soon as a strike was over the men would return. Now, that would debar your claim there, I think, that they get other jobs and sometimes stay away for a long period?—A. There is no saving clause in this bill as drafted. I think perhaps Mr. Knowles would agree with me in this; if you are going to write it into the bill, there should be a saving clause that a man should be so treated.

Mr. KNOWLES: That should be done for the majority who do return, I agree.

Hon. Mr. MITCHELL: What proportion of appeals to this board have been rejected and what proportion have been granted?

Mr. HAWKEN: In the matter of strikes, sir?

Hon. Mr. MITCHELL: Yes.

Mr. HAWKEN: Less than one in a thousand.

Mr. JOHNSTON: That one in a thousand might be an outstanding case. There might be some considerations from the person's point of view.

Mr. Knowles: This is the Canadian National.

Mr. Hawken: Yes, sir. It so happened it did not mean a hill of beans to the individual because he was a short-service man.

Mr. Johnston: I can quite see from what you have said that you have not had as much difficulty in the Canadian National in that regard as some other companies have. If this clause were put into bill 338, it would have a broader application than if it were limited to the railways. It would endeavour to give protection to all workers rather than just railway workers. I think, generally speaking, the railways have been more lenient in that regard than some other companies have.

Hon. Mr. Mitchell: If we were going to make it as broad as you suggest, you are going to have legal strikes which will destroy the company and there would be no pension anyway. This is the difficulty you encounter when you try to legislate on matters which should be considered in the normal process of day-to-day collective bargaining.

Mr. Archibald: Is it not a fact that the companies which have pension schemes are usually so large they have not been known to go broke?

The Vice-Chairman: Let us get away from this point. Mr. MacInnis, have you some questions?

Mr. MacInnis: I was going to mention that point which was raised of whether an employee ceases to be an employee because of a strike. It is covered by section 2, subsection (2) in bill 338.

> No person shall cease to be an employee within the meaning of this Act by reason only of ceasing to work as the result of a lock-out or strike or by reason only of dismissal contrary to this Act.

Mr. Knowles: I do not know whether that covers pension rights.

The Vice-Chairman: I think he gave you the answer. In his recollection, and in the recollection of members of this committee, they seldom return if ever unless all people are put back in their slot, as Mr. Hawken puts it. However, that will be a matter for consideration later. Are there any more questions to be asked, gentlemen?

Mr. Homuth: I should like to say this to Mr. Archibald who made some reference to company pension schemes and companies not going broke. The fact of the matter is that, if the Canadian National had operated as a private company and lost $50,000,000 a year for all these years, they might have been broke.

The Vice-Chairman: Gentlemen, are there any further questions. The Hon. Mr. Chevrier has a few observations to make on this bill. Some representations have been made to him and I will ask him to convey his thoughts to you.

Hon. Mr. Chevrier: There are just one or two things I should like to say in connection with the bill and the reasons why I thought it should go to this committee. When the bill came up for discussion I gave certain reasons why I thought it should not be approved, in so far as an amendment to the Railway Act was concerned. I understand that both Mr. Rosevear and perhaps Mr. Hawken as well, have enlarged upon those reasons. I do not want to go into them here. I say it would be a mistake to incorporate this bill as an amendment to the Railway Act for the reasons given at the time in the House, but particularly because it would upset the three pension plans of the Canadian National Railways. I do not think it is the intention of Mr. Knowles or any of those who favour this legislation to do that.

I did say, however, that I thought the principle of this legislation was good. Whether or not it should be incorporated in this code is not for me to say. It is a matter for the committee to decide. I think I should place before the committee the attitude of some of those who have corresponded with me. I am interested in the Canadian National Railways and they have made their position clear. With that position I have no fault to find. I have no brief for the Canadian Pacific Railway. They know the committee is sitting and can make representations if they desire.

However, I have received a letter from the solicitors of the New York Central Railway which is of such importance I think I should lay it before the committee. The letter is written from the firm of Kingsmill, Mills, Price, etc., of the city of Toronto, acting on behalf of the New York Central. I quote this letter to the committee. It is dated the 30th of March.

> Dear Mr. MINISTER,—We have been instructed by the New York Central Railroad to write you in connection with the above bill and to advise that the New York Central views with great concern the proposed legislation.
>
> The company is the lessee and operates the following lines of railway:—
>
> 1. The Canada Southern Railway between Detroit and the Niagara River;
> 2. The Ottawa New York Railway Company between Cornwall and Ottawa;
> 3. The St. Lawrence and Adirondacks Railway Company into Montreal.
>
> The New York Central is, of course, a foreign corporation and derives its corporate powers from its charter and the laws of the state under which it was incorporated. It has a pension plan which is presently applicable to agreement classes of its employees. The same the non-funded voluntary pension plan is strictly gratuitous and no contributions are made thereto by any of its employees—the plan may, at the discretion of the New York Central be discontinued, amended or changed at any time. If any proposed amendment of the Railway Act would have the effect of interfering with the company's control of this pension fund, then the company would give immediate and serious consideration to abolishing the plan entirely so far as its Canadian employees are concerned.

The letter continues, and I simply replied saying that the matter had been discussed in the House. The principle had been approved and the bill had been referred to this committee. I suggested that they submit evidence before the committee. The chairman tells me that last night it was decided to consider this bill. I do not think these people have had an opportunity of coming here. I presume this firm will want to appear if they possibly can and they should be given an opportunity of explaining their position. If what is stated in this letter is so, then there is a large number of Canadian railway workers who might be affected.

Mr. McIvor raised a point which should, I think, be given some consideration. If this bill or its principle is incorporated in the Act, then does it follow from that that the principle becomes applicable to industry, not only to railroading, but to other industries? That is a question which gave me some concern so far as accepting this as an amendment to the railway Act is concerned. It is a matter for the committee to decide. Those are the only two points I had to submit.

The VICE-CHAIRMAN: Gentlemen, I think from what the minister has said it is only fair that we give Kingsmill and Company or the New York Central an opportunity to appear before we reach any conclusion. I will endeavour to communicate with them today and get them here as soon as I can. As soon as I do that I will call a committee meeting, but it probably will not be until Monday. We have kept the solicitor from the department here. He has listened to the discussion and will be in a position at our next meeting, when we discuss these matters, to give us his legal opinion. I think the committee will want that.

Mr. SINCLAIR: One of the strongest points which was made, in my mind, was that if this became law then the companies would be reluctant to reinstate men whom they had dismissed for disciplinary purposes for such matters as keeping cash fares, for example. To what extent does the Canadian National Railways reinstate men whom they have dismissed. Does that happen often or is it one of those cases that happens once in a great while?

Mr. HAWKEN: Do you mean generally dismissed, or dismissed for knocking down fares?

Mr. SINCLAIR: Dismissed for cause.

Mr. HAWKEN: Very frequently.

The VICE-CHAIRMAN: I can relate a few instances in the Toronto district, unfortunately.

The WITNESS: I should like to make a general remark to the committee. This last evening when the chairman told me the bill would be considered today, I got in touch with the assistant general counsel for the Canadian Pacific Railway and he told me that he would try to be here today. Now, I do not see him here, but I just wanted to tell you that. I telephoned him last night and it is very likely the Canadian Pacific Railway would like to say something. I do not think I should remain silent when I know those facts.

The VICE-CHAIRMAN: We will be in touch with the Canadian Pacific as well as the New York Central.

Mr. ADAMSON: I wanted to ask the solicitor this question concerning the knocking down of fares. I happened to have quite a long discussion with one of the conductors the other night on this very subject. I understand that if a man takes a fare and pockets it, he is discharged if he is caught. If somebody on the train tells him a hard luck story, what then happens? Must he throw the passenger off the train? If he permits the passenger to ride to his destination, what happens? That question was brought up during the discussion and I mention it here because I should like to know what the general practice of the railway is.

For instance, if a conductor is told a hard luck story by a woman travelling with a child and he permits her to travel to her destination; secures her name and turns it in, is he considered to be knocking down fares?

Mr. HAWKEN: No, sir, all railway employees are just as human as any others. A man would not be dismissed for knocking down one fare. We check the revenues and we know something is wrong. A man is not dismissed for knocking down one fare. He would be dismissed most likely after three or four offences which were well proven.

Mr. HOMUTH: He is probably warned as well?

Mr. HAWKEN: Yes, invariably.

Mr. TIMMINS: Having regard to the merit which seems to be in the observations made by Mr. Rosevear that you cannot very well override a private act by a general act except in expressed terms so that this legislation, if we put it into effect, might not be effective, and having regard to the fact that it might not be useful to put it into this code we are dealing with as it may raise a contentious matter which may delay the bill, and having regard to the fact that you have regulations governing these matters and that you have a sense of the feeling of this committee in respect of the usefulness of some of these matters, have you any suggestion as to how this matter could be handled otherwise?

The WITNESS: Mr. Chairman, I feel that perhaps that is a matter for the Department of Justice to deal with. The point I tried to convey to the committee was this; most of the things mentioned here are carried out now by the Canadian National. In fact, all of them are. However, I would regret a bill being passed, either this bill, the special bill, or an amendment to bill 338 unless it is very carefully drafted so as to leave some discretion in the hands of the pension board and also to see to it that no injury is done to the employees. There might be an injury done to the employees and I mentioned reinstatement as one, you see.

The VICE-CHAIRMAN: Gentlemen, I think we are very nearly at the end of our session for today. I said that we would now give ample time for the study of the evidence. There are just a few comments I wish to make. They are not all-inclusive, but I do think I express the committee's view when I say that the briefs we have had before us were thoroughly good briefs; well studied out and represented a point of view.

Now, we are charged with the duty of passing this bill. One thing we cannot afford to do is to rush this bill because I think it is far too important a bill. There are 72 sections in the bill. They are not all contentious. I was going to direct your minds towards sections that you might give extraordinary study because they are likely to prove contentious. As I say, you might think others are contentious and I may not, but I do think you will find the interpretation section contentious. The question of foremen will arise. Then, there will be the question of collective bargaining and whether collective bargaining should include more than wages and hours of work. You will find considerable contention there.

I think you will find section 8 contentious, dealing with craft unions and whether the employer should have a multiplicity of unions or whether he should be dealing with one over all union. Section 9 may not be contentious, but it will be discussed thoroughly. It is a matter dealing with effective industry-wide bargaining.

Section 11 will be a very contentious section. I think you should study it very carefully because it deals with certification and decertification. Now, section 14 will also be contentious because it deals with the extension of time for negotiation. You have already heard from the various representatives as to what they think of the specified time now which they set at about three months.

Sections 39 and 40 are the enforcement sections and will also be contentious. A question will arise there as to whether enforcement should be by police magistrates which may be ununiform or whether it should be under the Criminal Code as it is at the present time or whether it should be by a labour relations board.

Then I think you will have the matter of ministerial discretion which will trouble some of us in the committee. I think the matter of reinstatement is a serious matter and the committee should give it considerable thought.

Mr. KNOWLES: That has a bearing on this matter, too.

The VICE-CHAIRMAN: Then, a question was raised as to the disestablishment of company unions. This is a matter to which you ought to give a lot of thought. It is a matter upon which labour feels very keenly. Of course, there will be the consttiutional question which is bound to arise and will lead to some discussion. Whether it will bring us anywhere or not is another matter.

There was a question raised in one of the briefs as to the power of the government to deal with anything that is in the legislative authority of the parliament of Canada, the sort of floating jurisdiction. Now, those were all questions which I thought were most important in this bill. There are others but I think they are rather minor although they may be important to some.

If you direct your energies towards those questions I think you will have the crux of the whole bill when we come back on Monday and we will be able to discuss it more easily than if we spread ourselves too thinly.

Mr. HOMUTH: When are you going to deal with bill 24 again?

The VICE-CHAIRMAN: As soon as I can make some arrangements to hear these people. I may even call another meeting before Monday.

The committee adjourned at 12.30 p.m. to meet again on Monday, July 7, 1947.

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Canada, Industrial Relations, Standing Cttee on, 1947

SESSION 1947

HOUSE OF COMMONS

STANDING COMMITTEE
ON
INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 6

MONDAY, JULY 7, 1947

INCLUDING SECOND AND THIRD REPORTS

WITNESSES:

Mr. D. I. McNeill, Assistant General Counsel, Canadian Pacific Railway Company;
Mr. F. J. Curtis, Superintendent of Pensions, Canadian Pacific Railway Company;
Mr. S. S. Mills, K.C., Barrister, New York Central Railroad System;
Mr. A. J. Kelly, Chairman, Dominion Joint Legislative Committee, Railway Transportation Brotherhoods;
Mr. J. J. Hendrick, Canadian Vice-President, Brotherhood of Railroad Trainmen.

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CONTROLLER OF STATIONERY
1947

ORDER OF REFERENCE

THURSDAY, 3rd July, 1947.

Ordered,—That the name of Mr. Winters be substituted for that of Mr. Baker on the Select Standing Committee on Industrial Relations.

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

REPORT TO THE HOUSE

TUESDAY, 8th July, 1947.

The Standing Committee on Industrial Relations begs leave to present the following as a

SECOND REPORT

Pursuant to its Order of Reference dated May 20, namely:—

> That the subject-matter of Bill No. 24 An Act to amend the Railway Act, be referred to the said Committee,

your Committee heard representations from the following:

(1) The Canadian National Railways Company;
(2) The New York Central Railway Company;
(3) The Canadian Pacific Railway Company;
(4) Dominion Joint Legislative Committee, Railway Transportation Brotherhoods.

The purpose of Bill No. 24 commends itself to your Committee, but it is recommended that a further study be made of its implications.

A copy of the relevant printed minutes of proceedings and evidence of the Committee—Nos. 5 and 6—is appended.

All of which is respectfully submitted.

DAVID CROLL,
Vice-Chairman.

The Standing Committee on Industrial Relations begs leave to present the following as a

THIRD REPORT

On June 24 last, Bill No. 338, An Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes, was referred to your Committee.

Proceedings were commenced on the following day and, since that time, twelve witnesses, representing the following organizations, have been heard:

(1) The Canadian Bar Association;
(2) The Canadian Brotherhood of Railway Employees;
(3) The Canadian Chamber of Commerce;
(4) The Canadian Congress of Labour;
(5) The Canadian Construction Association;
(6) The Canadian Federation of Labour;
(7) The Canadian Manufacturers' Association;
(8) The Trades and Labour Congress of Canada.

Written representation from the following organizations were also read into the records:

(1) The Canadian and Catholic Confederation of Labour;

(2) The Dominion Joint Legislative Committee, Railway Transportation Brotherhoods.

Your Committee also has on record a statement prepared by the Department of Justice, Ottawa, relating to the constitutionality of the type of legislation contemplated in Bill No. 338.

The Hudson Bay Mining and Smelting Company also made representations to your Committee in which they outlined the difficulty encountered in administering two sets of provincial labour regulations in their plant which is situated astride the Manitoba-Saskatchewan interprovincial boundary adjacent to Flin Flon, Manitoba.

With prorogation imminent, your Committee realizes that it will be impossible to give the said Bill No. 338 the consideration that it requires.

It is recommended that a similar Bill be introduced early next session.

A copy of the printed minutes of proceedings and evidence is appended.

All of which is respectfully submitted.

DAVID CROLL,
Vice-Chairman.

MINUTES OF PROCEEDINGS

MONDAY, 7th July, 1947.

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. Mr. Croll, the Vice-Chairman, presided.

Members present: Messrs. Adamson, Beaudoin, Blackmore, Charlton, Cote (*Verdun*), Croll, Knowles, Lafontaine, Lockhart, MacInnis, McIvor, Maloney, Merritt, Mitchell, Sinclair (*Vancouver North*), Timmins, Viau, Winters.

The Chairman stated the following had been received:

(i) Telegram, dated 3rd July, from the President, Canadian Seamen's Union;
(ii) Telegram, dated 4th July, from the Secretary, Lumber and Sawmill Workers Union, Port Arthur, Ontario;
(iii) Letter dated 3rd July, from the President, Findlays Limited, Carleton Place, Ontario;
(iv) Letter, dated 3rd July, from the President, The Board of Trade of the City of Toronto.

The Committee considered the subject matter of Bill No. 24, An Act to amend the Railway Act.

Honourable Lionel Chevrier, M.P., Minister of Transport, was in attendance and participated in the proceedings.

Mr. G. I. McNeill, Assistant General Counsel, Canadian Pacific Railway Company, was called. He made a statement and was questioned.

Mr. F. J. Curtis, Superintendent of Pensions, Canadian Pacific Railway Company, assisted the witness during the questioning.

It was agreed to print as part of the record the following papers filed by the witness:

(i) Synopsis of Canadian Pacific Railway Company Pension Plan;
(ii) Highlights of Pension Plan, Canadian National Railways Pension Fund.

The witnesses were retired.

Mr. S. S. Mills, K.C., Toronto, Ontario, was called. He made a statement on behalf of the New York Central Railroad System, and was questioned. He filed the following:

(i) Funded Contributory Retirement Plan for Salaried Employees and Officers, New York Central Railroad System, Issue of November 1, 1946. (*See Appendix "G"*).
(ii) Rules for Administration of Supplementary Pension System for employees other than members of the Funded Contributory Retirement Plan for Salaried Employees and Officers, dated November 1, 1946. (*See Appendix "H"*).

The witness was retired.

Mr. A. J. Kelly, Chairman, Dominion Joint Legislative Committee, Railway Transportation Brotherhoods, was called. He read a prepared brief and was questioned.

The witness was retired.

Mr. J. J. Hendrick, Canadian Vice-President, Brotherhood of Railroad Trainmen, was called and questioned.

The witness was retired.

The Chairman directed that the room be cleared.

The Committee considered draft reports to the House on,—

(*a*) The subject-matter of Bill No. 24, An Act to amend the Railway Act.

(*b*) Bill No. 338, An Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes.

On motion of Mr. Knowles,

Resolved,—That the draft report as amended on Bill No. 24 be adopted.

On motion of Mr. McIvor,

Resolved,—That the Report as drafted on Bill No. 338 be adopted.

On motion of Mr. Cote (*Verdun*),

Ordered,—That the Chairman present the said Reports to the House.

The Committee adjourned to meet at the call of the Chair.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

House of Commons,
July 7, 1947.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Vice-Chairman, Mr. D. A. Croll, presided.

The Vice-Chairman: Order, gentlemen.

Gentlemen, I have a number of communications here. One is from the secretary of the Lumber and Sawmill Workers Union, Port Arthur, Ontario, asking that they be heard. We have already dealt with representation from the parent union so I presume we will just file that.

Then I have a communication here from the president of the Findlay foundries, Carleton Place, giving the committee his views. I presume we will file that also.

There is also a brief here from the Board of Trade of the City of Toronto, quite a lengthy brief, about seven pages, giving their comments on the bill. I have acknowledged it and I presume that also will be filed.

Then I have a lengthy telegram from the president of the Canadian Seamen's Union asking that they be allowed to present the facts in the case in connection with the refusal to issue passes to some of their men in accordance with the findings of the arbitration board. I presume that is another matter to be filed. We have already made our decision as to whom will be heard.

This morning we have on the agenda the representatives from the Canadian Pacific Railway and the New York Central Railway, and the Legislative Brotherhood have a small two-page brief here which they would like to have read. That is in connection with bill No. 24.

Mr. McNeill, assistant general counsel of the Canadian Pacific Railway is here, and I will now ask him to come forward. He is to deal with bill No. 24.

Mr. D. I. McNeill, assistant general counsel, Canadian Pacific Railway, called:

The Witness: Thanks very much. Mr. Chairman and gentlemen:—I appreciate the opportunity this morning of speaking to the subject matter of bill No. 24. Mr. Roseyear spoke to the committee on Thursday week and I have very little to add.

Our company feels that when legislation is contemplated with regard to pension plans a great deal of care should be exercised in keeping in mind the basic principles which underlie all pension plans. The pension plan of the Canadian Pacific Railway was formulated as the result of joint efforts of four representatives of organized labour and four officials of the company, and in formulating that plan it must be assumed that they considered and kept in mind all the points which should be kept in mind when formulating a pension plan and that the resulting plan represents the views both of labour and representatives of the company; always keeping in mind that the plan is flexible, and by the same plan of discussion and negotiation changes if they are considered necessary can be made. The pension plan is based on one main essential and that is that benefits are necessarily from the standpoint of service which has been of some length and duration and which has been of advantage both to the employer and the employee.

In connection with the plan I think the best thing I can do is to file with you a short summary of the Canadian Pacific plan; and I am doing that because I think it might be useful information for the committee to have. I have also secured and will file a brief summary of the Canadian National plan, so that the committee will have before it a brief summary of the plans in existence on the two railways.

The CHAIRMAN: Is it all right to put these on record, gentlemen?

Carried.

SYNOPSIS OF CANADIAN PACIFIC RAILWAY COMPANY PENSION PLAN

Voluntary pension plan became effective January 1, 1903, under which the company paid pensions in full.

Contributory plan became effective January 1, 1937 and is administered by a committee of seven—four officers of the company and three general chairmen of the organized employees.

Rule 8.—Employees are eligible who last enter the service before 40 years of age and remain continuously therein until retirement under the rules; provided, however, that leave of absence, suspension, dismissal followed by reinstatement within one year, or a temporary lay-off on account of reduction of staff, need not be treated by the committee as constituting a break in the continuity of service.

Rule 11.—Employees' contributions 3 per cent; Employers' contributions, balance to meet total pension costs, including prior service at 1 per cent for each year's service based on average salary for last 10 years prior to retirement.

One-third of pension arising from service subsequent to January 1, 1937, is paid from the Pension Trust Fund, the remaining two-thirds arising from such service in addition to full pension for prior service is paid by the company.

Rule 12.—The trust fund is established to be invested and administered by the company as trustee, from which withdrawals are made in accordance with the rules.

Rules 14 and 15.—Normal retiring age for all employees is 65, but eligible employees may be retired between 60 and 65, at the discretion of the committee, either upon application of such employee or upon the recommendation of the head of the department to which he belongs. Retirement may take place also under age 60, in special circumstances, subject to the approval of the board of directors of the company.

Rules 17 and 18.—Calculation of pension; Length of service of a contributor is calculated on the basis of the number of months in which he has actually rendered service, twelve of such months to count as one year's service and the pension is the percentage, represented by the number of years so calculated, of the average monthly pay for the last 120 months of service, subject to a minimum of $30.00 per month.

Rule 19.—Survivor benefits—50 per cent of reduced pension allowance based on life expectancy of two persons. Election must be made six months prior to age 65 or, in the event of earlier retirement, pensioner must live six months following date of application in order to receive the benefit.

No minimum service requirement is necessary to qualify for pension.

AMENDMENTS TO PENSION RULES

EFFECTIVE SINCE COMMENCEMENT OF CONTRIBUTORY PENSION PLAN (JANUARY 1, 1937)

Effective through company action

Rule 8 (*a*).—Transfers between companies as contemplated by paragraph 5 of schedule to the Canadian National-Canadian Pacific Act 1939.

Rule 8 (*d*).—To provide pensions for employees of railway associations, etc.

Rule 10 (*a*).—Protection of prior service for employees laid off prior to 1937 and returning not later than December 31, 1940.

Rule 10 (*a*).—Further proviso for those returning after Dec. 31, 1940.

Rules 11 (*c*) and (*g*).—Disposition of unclaimed contributions.

Rule 12 (*a*).—Proviso to increase proportion of pensions paid from trust fund (company's contributions).

Rule 15.—Medical examinations for men retired under age 65.

Rule 19.—Revision requiring 6 months' notice prior to age 65 in case of election for joint survivor pensions or, in event of earlier retirement, requirement that pensioner must live 6 months following date of application in order for benefit to become applicable.

Rule 30.—Added to provide for transfer between companies.

Rule 34.—To cover pilots and other air line employees.

Requests for amendments made by employee representatives

Rule 11 (*g*).—Authority to refund contributions up to $1,000 to deceased employees' estates where no legal representatives appointed.

Rule 14.—Proviso respecting pensions for dismissed employees retained in service after age 65.

Rule 18.—Increase in minimum pension from $25 to $30 monthly.

Rule 20.—Authority to refund unused proportions of contributions up to $1,000 to deceased employees' estates if, where there is no Will, surety bond completed.

Rule 22.—Employee representatives while on leave enabled to contribute on basis of highest paid position in territory where they hold seniority rights.

Ten rules amended at instance of company and 5 rules amended at instance of employees' representatives.

CANADIAN NATIONAL RAILWAYS PENSION FUND

Highlights of Pension Plan

The Canadian National Railways Pension Fund is administered by a board of seven members, four of whom are officers of the company and three officers of recognized labour organizations.

The rules respecting the fund are the result of co-operative discussions between representatives of the company and organized labour.

The normal retirement age for all employees is 65 years.

Employees joining the service of the company since January 1, 1935, and who are under 45 years of age are entitled at the age of 65, provided they remain continuously in the company's service, to a basic pension of $300 a year at the sole expense of the company.

Every employee who entered the service prior to January 1, 1935, before attaining the age of 50 years and who at that date had more than 10 years service, if continuously in the employ of the company, is entitled at the age of 65 years to a service pension based upon 1 per cent of his highest average salary for ten consecutive years, multiplied by the number of years of his continuous service. No employee is entitled to both a basic pension and a service pension.

In addition to the above each employee is entitled to contribute from his salary towards a retiring annuity in even percentages of his annual salary not exceeding 10 per cent. At the end of the first 10 years of an employee's continuous service the company will match the employee's contributions on a dollar for dollar basis to a maximum amount of 5 per cent of the employee's annual salary.

The contributory feature of the pension plan is not compulsory and employees are entitled to change their rates of contribution on or before January 1st of each year.

Employees may, under special circumstances, withdraw their contributions in whole or in part with accrued interest. By withdrawals the employee loses the benefit of the company's matching contributions.

If an employee dies before reaching retirement age his contributions with accrued interest are paid to his heirs. If an employee's service is terminated before retirement age his contributions are refunded to him with accrued interest, excepting that no interest is paid on contributions made during the first ten years of service.

Upon reaching retirement age an employee is entitled to the basic or service pension and to such supplemental annuity as may be purchased from the company by the amount of his contributions added to the contributions credited by the company, together with accrued interest compounded thereon.

The form of the annuity may be selected by the employee as follows:

(1) Straight life.

(2) A life annuity guaranteed for a stated number of years.

(3) A joint and survivor annuity.

The pension plan also contains provisions for retirement at age 60 of physically or mentally unfit employees with 20 years service as well as for the voluntary retirement at age 60 of employees with at least 30 years continuous service upon certain conditions. There is also a provision whereby an employee 60 years of age or over with 35 or more years continuous service may elect to receive a guaranteed or joint survivor annuity, payable upon his retirement. If such election is made and the employee dies in the service the annuity would become payable to his widow or to his heirs, the date of death in such cases being regarded as the date of retirement.

The pension rule respecting the subject matter of Bill 24 reads as follows:—

> 16. The following need not necessarily be considered by the pension committee as a break of continuous employment or continuity of service:
>
> (1) Absence on leave.
>
> (2) Temoprary lay off on account of reduction of forces.
>
> (3) Suspension or discharge if followed by re-instatement or re-employment within one year with the approval of the head of the department.
>
> In reaching a conclusion as to whether there has been a break in continuity of service the fact of the employee entering other employment during such absence, whether on leave or from suspension, discharge, or lay off, may be considered by the pension committee.

The regulations for computation of service which are supplementary to and complementary of the pension rules indicate quite clearly that absence on leave and temporary lay off on account of reduction of forces do not constitute a break in continuity of service. The words "need not necessarily be considered as a break in service" have no significance with respect to sub-paragraphs (1) and (2).

The WITNESS: Now, a pension plan in any industrial undertaking will not be successful unless it is actuarily sound, and whether a plan is actuarialy sound or not depends upon the benefits that are to be paid out in connection with the plan in conjunction with the contributions that are made to it. The Canadian Pacific fund benefits are based on a pension which is calculated on the remuneration of the last ten years. The effect of bill No. 24 which is intended to give credit for the entire service is in conflict with that principle because you are going to give an employee credit for his entire service, whether it is broken or not. It is only actuarily sound to do so if when the time comes to pay his benefits you base those benefits on his earnings over his entire period. The Canadian Pacific plan in practice has envisaged the payment of benefits based on average earnings of the last ten years, so the employee gets the full benefit of his progressive promotions, or the manner in which his career with the company has been carried out. We should also keep in mind the results of treating the man whose service is not broken for reasons which are contrary to or in conflict with the very basis of his employment as against the man who leaves the service apparently to improve himself and who may subsequently come back to the service.

There is only one other point which I think might very well be kept in mind, and that is that the contributions of the employee under the Canadian Pacific plan are paid into a trust fund. That trust fund is administered by a committee composed of three representatives of organized labour groups and four representatives of the company. That money is paid into the trust fund subject to the trust created by the rules and regulations of the pension plan. If legislation is going to affect the rights of every individual employee in that trust fund, and that will be the result of such legislation, I think it might well be kept in mind that the question of constitutionality arises because definitely that legislation will be dealing with private property and civil rights of the individual employee because the man who has paid his contribution into the fund has put it in on the basis that it will be paid out in accordance with the rules and regulations. If these are changed to give benefits other than those which have been agreed to it is bound to affect the position of each individual employee with respect to the contributions he has paid into that trust fund.

I have with me to-day Mr. Curtis who is the superintendent of our pension fund. He is here to answer should any members have any particular questions to ask about the administration of our pension scheme. He will be glad to answer questions of that nature.

Thank you, Mr. Chairman.

The CHAIRMAN: Gentlemen, you have heard Mr. McNeill's presentation. Are there any questions?

By Mr. Timmins:

Q. It is suggested that if you change the plan of the scheme the fund is going to be affected. I suppose you mean by that that it is going to be affected by this new legislation, and that it is going to be affected to the disadvantage of the pension holders; is that the case?—A. Well, it seems to me that if you have 60,000 or 70,000 employees who are paying contributions into that fund which is a trust fund and from which they know they are entitled to certain benefits on retirement and know that their ability to secure these benefits is based upon a scheme which has been formulated and which we will presume is actuarily sound, and if a group of the 60,000 or 70,000 break their service for any reason at all such as is stated and that does not give them the right to retain their benefits in the fund and if by legislation you are going to give that group these benefits you are certainly placing a burden on that fund in which the other employees who have not broken their service have an interest because, it would have to be paid from money which was in that fund.

Q. Do you think it would be affected by reason of this new legislation; that it would create a situation whereby the payments which have been more or less fixed up to this time would have to be revamped as between the employer and the employee and with respect to the employer's share that he would have to pay in?—A. I do not think that there is necessarily any question that ultimately a pension plan which can now pay certain benefits based on certain conditions of service, from which you are going to have to pay these somewhat more variable or greater benefits based on different conditions of service, is going to have higher contributions to bear that added burden. One particular burden may not make any difference over a period of a few years but if you accumulate the burden with respect to suspension and the burden with respect to something else and another burden with respect to something else, pretty soon that fund is not going to be able to carry these added burdens.

By Mr. Knowles:

Q. Mr. Chairman, might I ask Mr. McNeill one or two questions? First of all, is it clear that both of us are talking about the future and not about the past as far as this legislation is concerned?—A. I do. We are talking about the future.

Q. I mean, I wondered from what you had said whether you might not have the past in mind, particularly when you referred to the actuarial soundness of the plan. May I ask you to explain how a break in service affects its actuarial soundness? If I may explain further what I have in mind: what you have said almost leads me to conclude that the present pension plan has been worked out in anticipation that there would be certain breaks of service with certain resultant loss of pension rights. After all, I do not think we are asking for anything in this bill which a man has not already earned, if you get what I mean.—A. I think I understand.

Q. After all, when we ask for a continuation of pension rights we do not ask for any pension payments to individual employees that they have not earned by service and under the provisions of the plan. How does it upset the actuarial soundness of the plan?—A. I think I understand what you have in mind, Mr. Knowles. The first point as the bill is presently prepared, I do not think it is at all clear where you have a break in service as to just what the actual mechanics are to deal with it. But when I speak of the actuarial aspects of the plan I am speaking with reference to one particular thing; how it affects the actuarial basis. What I am thinking of is the principle. If you take a plan that has been worked out to build up, as any pension plan does, certain benefits on the payment of certain fees, the very basis of it is bound to be affected, and they are based on certain conditions of service; and in connection with any such plan there is the question of eligibility for pension; and it takes all of these facts and figures together to give you your pension plan. It is those factors put together which give you the actuarial basis of your pension plan, and which determine whether or not it is actuarily sound. Assume that you take a plan that is in being and decide by legislation to apply to it some other conditions as to service or as to eligibility or as to benefits, you are bound to disturb the basis upon which that plan has been worked out. One instance may not be sufficient to upset it, two instances may not be sufficient to upset it; but when you come to three or four or five instances—and I have no idea where you are going to stop eventually—you are bound to affect the basis of the plan. I do not see how you can avoid it.

Q. Well then, let me ask you one thing further. Suppose you start from this point and over the next forty years you have no strikes of any kind; if that is the case, do you still think the plan will be actuarily sound?—A. I would say it must be actuarily sound as it stands without any break in service over the next forty years, because that is what is contemplated.

Q. Then, what payment would the fund have to pay caused by breaks in service that would be affected by a provision of this kind?—A. I think we have to consider carefully every individual change that is going to affect the actuarial principle involved in a pension plan. I have no hesitation at all in expressing my views as to the principle involved.

Q. And that is what makes it look to me as though when this plan was designed there would be certain breaks in service and certain losses of pension rights, if the fund is not going to be able to cover this. Otherwise, how would it affect the actuarial soundness of the plan?—A. No, I think you will recall that you used the words "actuarial basis" rather than "actuarial soundness". And, when I referred to the actuarial basis of the plan what I had in mind was this, that if any pension plan is going to work out in the way it is planned to work out it must be based on certain actuarial facts. I would like to be able to explain these factors better than I can; of course, they are complicated; but as soon as you change the underlying factors of the plan you necessarily change the basis upon which the actuary has said the plan would work.

Q. I quite appreciate that if you change the factors which establish the soundness of the plan that you will change its basis; but the answer you have given to my question makes it appear to me that a part of the actuarial basis of the present plan includes certain factors and some of these factors are the assumption that there will be a break in service that will violate certain rules and result in losses.—A. Yes, or to put it another way I think if your actuary looked at a plan and said "your pension fund has to support pensions under certain circumstances which are not now within that," that he cannot tell you in the long run that plan can be self-sufficient to do so without increased contributions or something of that nature. When you start to compare pension plans one between another you will find in one plan certain provisions that seem very beneficial. You will look at another plan and they do not appear there, and you may say that the second plan suffers by comparison, but generally speaking, and I think almost always, you will find in that plan some other condition or some other factor which is an offsetting advantage to the advantages of the other plan. You have got to look at the plan as a whole, and as soon as you start to disturb it I think you are running into trouble. I really feel that industries which to-day have no pension plans, and which may be contemplating them, will be much slower to put pension plans into effect if they are faced with legislation of this kind. As to plans that are already in existence I think you are going to find they cannot, to an unlimited extent, support alterations by legislation.

Q. I will not pursue that matter further except to say it does seem to me the basis of a plan that provides that those who will benefit by it will benefit in part because of the losses of others who do not keep the conditions laid down in the plan on its present actuarial basis. . .

Mr. Lockhart: I wonder if Mr. Knowles would turn a bit and speak so that we can hear him.

Mr. Knowles: I am sorry.

By Mr. Knowles:

Q. One other point that Mr. McNeill made was to the effect that the plan as worked out calls for the payment of a pension based on the average earnings during the last ten years of employment. May I ask the witness what difference it would make to that factor to have a break in service protected as this legislation would do? Would it not still be as your plan indicates, on the last ten years?—A. I think any plan I know of which pays benefits based on total service, whether that service has been broken or whether it has been continuous, pays a pension based on the earnings over the entire period of the service. Our pension plan pays benefits based upon the earnings of the last ten years of service. I do not think you can find, except in exceptional instances, where the average earnings over an entire period of service approach anything like the average earnings over the last ten years of service.

Q. That point is not in question. I recognize in some respects that is better. My other question is this. Accepting your basis of making a pension payable on the basis of the last ten years what change does it make if a break in service is protected? Is it not still the case that the pension would be based on the last ten years as laid down in your rules?—A. Yes, and what I am suggesting is that the benefits paid on the last ten years of service, which is a favourable basis for calculating your pension, is an offset to those plans which pay on your entire service, whether it is broken or not, but which are based on your earnings over the entire period. These are comparable as they stand in that way, but you take any system and you want to add to that payment for entire service, whether it is broken or not, and you immediately upset that comparison to the disadvantage of the plan which does not now take into account broken service of the nature you have contemplated in your bill. I offer these as various examples of how you cannot take a plan which has been worked out in its entirety and legislate with regard to one aspect of it. I do not care what the aspect is. I am not speaking about the particular content of bill 24, but I am saying if you take any pension plan which has been worked out in its entirety and affect it in any single or any one or two respects you are bound to disturb the basis upon which that plan has been worked out.

Q. May I put it this way. Take the case of two employees, one with a service of 25 years and another with a service of 35 years. I take those figures so that both of them will have got started at age 40 and be able to retire at 65. Their pensions will be different because one has been in the service longer and has attained a higher rate. Is that correct?—A. Provided their remuneration is the same in the last ten years that would be so. On is paid for 35 years service and one for 25 years service.

Q. Let us suppose one of them has a break in that service. It does not matter which one. We will take the 35 year one and say he has a break in that service but comes back. Would you explain how you think this provision makes any difference? Would it not still be the case that the 35 year person would get his pension based on the full 35 years.—A. I do not know just how your bill can be—

Q. Based on the 10 years—I am sorry. He would get his pension based on the last 10 years?—A. I do not quite understand.

Q. You seem to be taking the position that my bill calls for something different than you now have in that it calls for the pension to be based on the total length of service rather than on the last 10 years. My contention is that all this provides is for that 35 year employee to get his pension rights, and his pension rights are to have the pension based on his last ten years of service.—A. Even if he had a break in his service?

Q. Yes.—A. I am afraid I cannot agree with that principle.

Q. I have two other questions. Would you explain the difference between an employee who has a break in service due to suspension or a strike on the one hand and the break in service of the man whom you have described who leaves the service voluntarily to better himself and then comes back later on? I take it your viewpoint is that the second man, the man who leaves the service voluntarily and comes back later on, if he is still under 40, should have the right to enter the plan. What is the difference on the plan actuarily in those two cases?—A. That is one of my suggestions of the result of such a bill. At the present time the man who leaves the service voluntarily and then comes back does not get credit for the service prior to the time he left. I do not know why he should. He has left voluntarily presumably to better himself for reasons of his own. He may eventually come back to the service and he gets no credit in his pension for the period prior to his break in service. Yet you propose by the bill to give to the man whose break in service results from a strike the right to come back and have credit for his entire service both prior to and after that break in service.

Q. I think the way you put it before was you were going to give that benefit to the man who left voluntarily.—A. He does not get it now and there is no reason why he should. I do not see why he should be discriminated against in a sense by such a bill as is being proposed now.

Q. We could go into that. The reason for his leaving would be a little different than the reason for the break in service in the other case. You spoke of the investment that the men would have in the trust fund as being a matter of property and civil rights. That sounds like a discussion—

The VICE-CHAIRMAN: Had we not better get a legal opinion on that?

Mr. KNOWLES: It sounds like a discussion we have had ad nauseam around here.

By Mr. Knowles:

Q. You are aware, are you not, of the recent amendment to the Canadian National-Canadian Pacific Act which brought railway workers wage rates and hours of work and other things under federal jurisdiction?—A. I am familiar with it.

By Mr. McIvor:

Q. I do not know whether my question is in order or whether it will be answered, but I think this is a good place to ask it. Do you not think it would be a good thing to obliterate both these pension schemes of the C.P.R. and C.N.R. and put them on a contributory basis so that it would wipe out the gross injustice to men who have served, as I have found one who served, for 32 years and he has no pension. These men would be better off to have no pension at all than to have that.—A. I do not know what you mean by putting them on a contributory basis. They are on a contributory basis now.

Q. Why is it that a man who has served for 32 years, or within two months of having his pension, gets nothing? You would not say that is fair.—A. I do not know the particular case, but I can suggest this to you. In 1937 when the Canadian Pacific plan was put on a contributory basis all employees in the service were given the option of coming into the plan on that basis or not. It was their option, and I know it was not exercised by all of them.

Q. I can give you one case at Fort William where a man only had two months more to serve and he gets nothing. Of course, he was sore, and I was not very happy.—A. I do not know the particulars of that case. I could not even attempt to answer it.

Q. I will be glad to give the particulars. On the C.N.R. I know of a conductor who served for over 32 years, and he got a pension on compassionate grounds through the president of the C.N.R. I do not think that man should have to have a compassionate pension. I think he should have an up and coming pension at least equal to the old age pension of $40 a month.—A. It would be difficult to answer the question without knowing the facts of any of these cases.

By Mr. Lockhart:

Q. I want to ask one or two questions. I have been getting a little clearer insight into this thing since I have been able to hear all the comments that have been made by Mr. Knowles and the witness. To sum it up very briefly I gather the original plan of your pension scheme included a continuous contribution by the employee.—A. I would not say the original plan because prior to 1937, while pension benefits were paid to employees very much upon the same conditions as maintain now, it was paid entirely by the company and no contribution was made by the employee. In 1937 the cost of that had become so great that a contributory pension plan was evolved in conjunction with the officials of the labour organization. That is our present plan to-day which calls for a 3 per cent contribution by the employee. I might say in that respect so you will have the whole picture—

Q. That part I quite appreciate.

The VICE-CHAIRMAN: Let him finish. What were you going to say?

The WITNESS: If I have given Mr. Lockhart all the information he needs on that point—

Mr. LOCKHART: I think you have.

By Mr. Lockhart:

Q. If there was a break in service prior to 1937 would that mean that your own company did not make contributions for a particular employee if he was out for any cause?—A. It depends what the break in service was for.

Q. In most cases could it be said you did not make contributions for him?—A. No, no, I would not say in most of the cases.

Q. Where a man left of his own accord?—A. If a man left of his own accord his service with the company stopped.

Q. Suppose there were labour difficulties and the man was off work; would those contributions still go in the fund?—A. By the company?

Q. Yes.—A. There never was a fund and there never were contributions. It was paid from current earnings.

Mr. KNOWLES: It is like the consolidated revenue fund of the federal government.

By Mr. Lockhart:

Q. In the original setup the fund was organized on the basis of employees working continuously?—A. Quite.

Q. Then the lack of payments being made from any cause whatever is the main reason why you are saying now that it would affect the fund to the extent that you probably would reach the point, if there was too much of it, where you could not pay the original basis of benefits set up? Is that right?—A. I do not want to leave the impression that one instance of what is covered by this bill would work, if you like, to make that fund insolvent. I doubt if one situation would. I suggest that just as soon as you start affecting the existing plan, you will ultimately reach the stage where you will make the fund unable to carry itself.

Q. If there are a series of interruptions, they keep piling up. It was for that reason that, in 1937, you made this adjustment?—A. Oh, no.

The VICE-CHAIRMAN: He said it was due to the cost.

The WITNESS: Up to 1937 the entire cost of paying such pensions to employees who reached retiring age was being borne by the company out of earnings. The cost of this was beginning to be very serious. In 1937, it was decided that if the employees were still to receive a pension at the age of 65 comparable to the one they were getting, they would have to contribute towards it themselves. They would have to make some contribution, bear some part of the cost of this pension. Therefore, in 1937, our present contributory pension plan based on the creation of a trust fund was set up. This plan is administered by this committee made up of the men and the company.

By Mr. Lockhart:

Q. Prior to 1937, there was no contribution set aside?—A. None at all.

Q. It was just taken out of current revenue?—A. That is quite right, sir.

By Mr. MacInnis:

Q. In connection with the pension plan which was instituted in the first instance, was there any question of it being considered part of the wages of the employees?—A. You mean before it became the present contributory plan?

Q. Yes.—A. You asked me a question, but I cannot tell you what was the thought at that time. I honestly believe when the company started paying a pension to retired employees it was paid on a basis or it was a reward, if you wish to call it that, for long and loyal service to the company. It was probably to the advantage of the company to do so. It would maintain and retain that type of service.

Q. If an employee leaves the service now, is he repaid the contributions he made into the plan?—A. He is.

By the Chairman:

Q. With interest?—A. Without interest.

By Mr. MacInnis:

Q. If an employee is discharged for cause is he paid?—A. If he is reinstated within one year the committee may in its discretion decide that will not affect his pension rights.

Q. But if he is discharged for cause does he receive any payment made into the fund?

Mr. CURTIS: He gets his contributions back, but if he is returned to service he can repay his money into the trust fund and get credit for that service.

By Mr. Knowles:

Q. There is no question but that a discharged employee would get back his contributions?—A. If his service is terminated for any reason, he gets his contributions.

By Mr. MacInnis:

Q. What I had in mind was whether the actuarial soundness of the fund was based on the fact certain employees will pay in money and will not get it out?—A. No, it is not, although I will say this: that basically on termination of service they receive their contributions back without interest because it was calculated by the actuaries that the only way you can maintain a fund to pay the benefits which were contemplated was, on termination of service the employees would get their contributions back but they would not get it with interest.

By Hon. Mr. Mitchell:

Q. When this new plan was established in 1937, did the company make any lump sum contribution?

Mr. CURTIS: No, sir, they did not.

The WITNESS: So you will understand that, may I say that the change was made in 1937. We have still a great many employees whose service goes back before 1937 and so goes back to a period before they started to make contributions to that fund. On retirement, these employees receive their regular pension but only a proportion of the cost of that pension which is attributable to their years of service since 1937 comes out of that trust fund. The rest is paid by the company.

By Mr. Knowles:

Q. That would imply that the man had an equity prior to 1937?—A. I would not say so, no.

The CHAIRMAN: Are there any further questions, gentlemen?

By Mr. Timmins:

Q. You said a few minutes ago that there were three employees of the company who sat on this pension fund board?—A. On the pension committee. There are four officials of the company and three employees.

Q. Have any requests or recommendations such as we find here in the bill come to the company for legislation or for adjustment from these three employees?—A. With respect to what?

Q. This type of adjustment?—A. I do not know. I am sure that constantly there is exchange of discussion between the employees' representatives and the company's. What they constitute I do not know.

Q. In respect of the labour unions who are the bargaining agents for the employees can you tell me whether or not any requests for adjustments such as we have here have come from those bargaining agents?

The CHAIRMAN: They are here this morning and will be witnesses within a few moments.

By Mr. Merritt:

Q. As I understand it, you said if an employee is out of employment for a period when he goes back he does not get the benefit of his prior service?—A. Under certain circumstances, that is right. If he is laid off, he does. If he leaves of his own accord, he does not.

Q. So, if he is laid off for sickness for instance, he retains all his benefits?—A. Oh, yes.

Mr. KNOWLES: That is, he may be given those benefits under rule 8-A. We had the same point up the other day when the Canadian National was here. It is not automatic.

The WITNESS: It is discretionary with the committee.

By Mr. Merritt:

Q. So, if he is laid off for sickness he might forfeit his rights based on prior service?—A. I suppose that theoretically, he might. I do not know of any case where he has.

Q. What about this item in the bill, temporary lay-off on account of reduction of staff; how does that affect the present employees?—A. As a practical matter he does not lose his service. It also comes within the discretionary clause.

Q. In practice?—A. In practice, he does not lose his service.

Q. So, really this temporary lay-off on account of reduction of staff is unexceptional in the bill, or do you feel you should maintain the right to exercise discretion?—A. We feel, when you have a pension plan which is administered by the representatives of the employees and of the company it is better to leave that in their discretion. You do not know what specific case you may run into. I do not know of a case where it has been exercised against the employees. Pension plans, if they can be worked out between employees and management, are far better than pension plans disturbed or imposed by legislation.

Q. I certainly agree with you there, but since this bill is now before us we have to treat it on its merits?—A. I quite appreciate that. After all, you are dealing with it on its merits.

Q. Are there any other items in the bill which are in effect or practically in effect now, although they have not got legislative sanction?—A. I do not like to look in the bill and suggest that, in the terms that they are in the bills, those same terms are in effect under the plan because I find it difficult to know where the bill ends.

Q. What is the present practice in regard to employees who are on leave of absence, a term which suggests to me that both the employer and the employee have agreed that he may go out of service for a certain period?—A. If he is on leave of absence, the management assumes when they require him and call him he will come back to the service. When he does, he is given his prior service for pension service. If, on being called back, he does not return to the service, he is not any longer on leave of absence.

Mr. KNOWLES: I hate to be interrupting all the time, but I think it should be stated that when he returns at the company's request he may be given his prior service.

The WITNESS: He may be given it but, as a matter of practice, he is.

By Mr. Merritt:

Q. What is the present practice with regard to suspension?—A. It comes under this discretionary clause. Provided that reinstatement is within one year and his prior service is all right, it is within the same discretionary clause as we spoke about.

Q. The period of one year is set for actuarial reasons or arbitrary reasons or what?—A. I could not tell you. I think it has some very practical advantages. It means the man's case is going to be dealt with before the expiration of a year.

Q. Dismissal followed by reinstatement, what is the practice now?—A. The practice followed, provided it is reinstatement within one year, the practice is he receives the benefit of his prior service.

Q. It is the same as suspension and the same as lay-offs. Another item which is in the bill but which does not come under the plan is lock-outs and strikes. However, you are free of those things?—A. You are getting into a very dangerous field when you come to that. There are a lot of questions, if you really want to dig them out. Does it call for legal strikes, illegal strikes? What is a legal strike?

Q. Have you had any practical experience with what happens to the pension plan resulting from a strike?—A. Yes, Mr. Knowles, has probably told you that many times.

Q. I am afraid I was not here the other day.—A. We have had men who have been out on strike who did return to the service and have been taken on as new employees.

Q. So they have never had the benefit of prior service?

By Mr. MacInnis:

Q. Mr. Merritt raised the question of suspension. Suspension is not considered a break in service, it is a disciplinary action?—A. He is still in the service but subject to suspension; that is the meaning of the word.

By Mr. Adamson:

Q. I should like to ask the witness a question concerning employees who are killed in the service. I have a case which I want to bring to his attention a little later. Employees who are killed by accident not caused by themselves, but accidentally killed, what is the pension scheme in that connection?—A. It is return of the contribution, Mr. Adamson.

Q. But if they are killed on service, does the company make a widow an allowance?—A. If you are confining yourself to the effect with regard to the pension and the employee has not reached the retirement age, it is a matter of the termination of service and the contributions are refunded. If you are speaking of the other results of an employee being killed, they come under the compensation law.

Q. In the case of a brakeman who has had 23 years of service, his widow is made an allowance according to a statement I have of $45 a month?—A. That must be from the Workmen's Compensation Board.

Q. That is not from the railway at all?—A. That is not from the pension, that is the workmen's compensation.

Hon. Mr. CHEVRIER: Is that an Ontario case?

Mr. ADAMSON: It is an Ontario case. The widow suggests she receives the money from the company.

The WITNESS: The company pays it into the workmen's compensation fund, but it is a workmen's compensation award.

Hon. Mr. MITCHELL: The railways come under schedule 2. Schedule 1 is for general industry and schedule 2 is for the railways.

The WITNESS: We are what they call self-insurers.

Hon. Mr. MITCHELL: The compensation board sets the rate and the company pays it.

The VICE-CHAIRMAN: Are you through, Mr. Adamson?

Mr. ADAMSON: Yes.

By Mr. Knowles:

Q. First of all may I ask Mr. McNeill, following some other questions asked, whether the summaries of the pension plans that were tabled and filed in the record include any financial statements as to the total amount of the contribution paid by the employees and by the company?—A. No, they do not.

Q. Are those available as a matter of public record?—A. No, they are not, but I imagine if there is any particular information you want to have and if it is something we can get, we would get it. As you know, when you start asking questions on figures in connection with a pension scheme it is limitless, in view of the different forms those figures take. If there is anything specific we would get it for you.

Q. Just one other point in the form of a question to help clear up a matter between Mr. Merritt and Mr. McNeill. Is it not the case that the proviso in bill 24 follows almost word for word rule 8(*a*) of your pension bylaws with only three changes. First of all, in connection with absence due to certain causes that are already in rule 8(*a*), such as leave of absence, suspension, dismissal, or temporary lay-off on account of reduction of staff, it makes those absences arbitrarily not a break of service. At the present time it is a matter of discretion but this bill would settle the matter. The second thing it does is to change "dismissal followed by re-instatement under one year" to "dismissal followed by re-instatement", and it adds absence through strike, lock-out or industrial dispute. Those are the three changes that would have to be made in rule 8(*a*) if this came into effect?—A. Those are certainly the changes in language but the changes in effect could not be expressed quite so simply.

The Vice-Chairman: Well let us get on, are there any further questions? May I put this to you, Mr. McNeill? If the clauses read "provided that in the administration of any railway retirement or pension plan, leave of absence due to any industrial dispute, illegal strike or illegal lock-out shall not disqualify any railway employee from any retirement or pension rights or benefits to which he would otherwise be entitled",—assuming we leave the discretion with you, if we merely added "illegal strike or illegal lock-out" what effects could that possibly have upon your pension plan?

The Witness: Well that is a rather difficult question to put to me, Mr. Chairman, because while I certainly agree it constitutes a vast improvement, as to what the position of the company with regard to it would be I could not possibly speak.

The Vice-Chairman: All right, that is all thank you.

Now we will have Mr. Mills of Messrs. Kingsmill, Mills, Price and Fleming, Barristers, Toronto, Ont.

S. S. Mills, Esq., K.C., representing New York Central Railway Co., called:

The Witness: Mr. Chairman and gentlemen, I thank you for the privilege of appearing before you. The notice from the secretary of the committee arrived a little bit late and on account of the national holiday in the United States I am here in support of the two letters which have been written to the minister and which, I think, have been read into the record.

Hon. Mr. Chevrier: I just read one letter.

The Witness: The New York Central is the lessee of the Canada Southern Railway Company which runs from Detroit to the Niagara River. The Canada Southern Railway gave a 999 year lease to the Michigan Central, which in turn sublet to the New York Central for 99 years. The Canadian operations are therefore part of the New York Central system. It has over 50,000 employees of which some 3,000 are in Canada who are below the rank of foreman, and there are probably 400 or 500 above that rank. Some years ago there was a voluntary pension scheme put in by the Michigan Central which was carried on by the New York Central after it took the lease. Then some twenty years ago the government of the United States passed the Railroad Retirement Act that extended to all American railroad employees no matter where they were working. Consequently the 3,500 employees in Canada have been enjoying the benefits of the United States Railroad Retirement Act. That takes care of a man getting a wage up to $300 a month and he goes out at 65 years of age. He draws his American cheque monthly after that. There was no pension plan in force for those receiving more than $300 a month and the New York Central carried on its supplementary pension scheme voluntarily and gratuitously, to which they add the federal retirement allowance extended to those employees who have at least 20 years continuous service. In November, 1946, a funded contributory retirement plan for salary employees and officers was adopted in the United States and that extends to all the 50,000 or 60,000 employees. It is optional with the employee whether he joins or otherwise. This is going to be qualified in Canada under the provisions of the Income Tax Act and its benefits will be extended to many hundreds of Canadian employees. Now those are the three systems of pension scheme, one of which is a federal statute. The railway company views with some grave concern the proposed bill of Mr. Knowles and it is a foregone conclusion that they could not have a pension scheme for part of their employees living in the state of Ohio or New York, and another scheme for those living in Ontario. It has got to be one system of pension scheme which would be adopted and applied to all employees. Now Mr. Kelly will bear me out in this, when the question of unemployment insurance came up, the New York Central and other railroads operating in Canada assured the Canadian government their employees were getting the benefit of the provisions which existed in the United States. Consequently there was an amendment made to the Act which excluded its application to American railroads. Now I am going to ask you to consider whether it is intended that this legislation should apply to the American railroads operating in Canada under lease or running rights. I am in doubt myself as to the application of section 121 to these railroads. Considering section 72 right down to 149 you will find numerous provisions. You have the board of directors which should be appointed, the shareholders rights, the calling powers, and how dividends should be declared. Then we get down to section 122 and there we find the enabling power of directors to make bylaws, from time to time, not inconsistent with the law. Then (*c*) covers retirement of employees.

The VICE-CHAIRMAN: Just a moment there, Mr. Knowles, is it your thought that we can, by legislation affect this railway? Did you give that some thought?

Mr. KNOWLES: As a matter of fact I am still following the witness' argument and I would rather hold my opinion.

The VICE-CHAIRMAN: All right.

The WITNESS: This amendment is tacked onto (*c*) of 122. My submission is the New York Central does not have to look to this railway act to enable its directors to institute its pension plans. It does so under its own charter rights and under the state laws in which it is incorporated. These sections manifestly were never intended to apply to other than those corporations incorporated in the dominion. True, the Canada Southern is incorporated in the dominion but it has leased its running rights, its line, to the New York Central. The corporate entity of the Canada Southern is continued, it makes returns, files income tax returns but it is not running a railway. If there is any question in your mind, my submission is that a legal opinion might be asked for by the committee as to whether section 122 has application to us. Now I propose to file for the benefit of the committee, pamphlet copies of the pension schemes other than the federal statute. I am not prepared to answer any questions. I did hope that I would have Mr. Horning from New York to answer if there were any questions, but for the reasons before stated he was not able to be here. Manifestly, if it is proposed or intended this should apply to the New York Central, then it should apply to the Pere Marquette or the Great Northern and then we will have to consider whether our pension schemes will be permitted to extend into Canada. I would file first of all the voluntary pension scheme with which the railroad provides its own funds.

The VICE-CHAIRMAN: That will be filed as an appendix.

The WITNESS: I will also file a pamphlet copy or the proposed funded contributory retirement plan which I have stated it is intended to have qualified under the Income Tax Act.

The VICE-CHAIRMAN: Is that all Mr. Mills?

The WITNESS: That is all.

The VICE-CHAIRMAN: Are there any questions from Mr. Mills?

Mr. TIMMINS: What you are saying, Mr. Mills, is that you have a private act and it cannot be changed by any general act.

The WITNESS: No, I say we are incorporated in the United States of America. The New York Central has its charter there. Its directors are in New York; its shareholders are in the United States; and it does not have to look to the Railway Act at all for its management. It is only in so far as the running of the lines is concerned that we have got to conform to the provisions of the Railway Act. When it comes to shareholders and directors, auditors and so on, I say this Act should not extend to us and I suggest that an opinion be obtained.

Mr. KNOWLES: I think it is quite clear from what Mr. Mills has pointed out that it does not apply.

The VICE-CHAIRMAN: Mr. Kelly has a short statement from the Dominion Joint Committee of Railway and Transportation Brotherhoods.

A. J. Kelly, Chairman of Dominion Joint Legislative Committee, Railway Transportation Brotherhoods, called:

The WITNESS: Mr. Chairman, and members of the committee, perhaps my first words should be in support of what the previous witness has said. We think that, as stated by him, the entire situation in respect to pensions, employment, insurance, and what have you, of American railroad employees, of employees of American railroads operating very short sections of line in Canada, are now all covered by the United States Railroad Retirement Act, and legislation of a comparable nature. That is applicable to the entire personnel and we suggest to you it seems reasonable and proper that any proposed changes, such as are now before you, should not interfere with the practice of some years standing with respect to employees on American railroads operating in Canada.

Hon. Mr. CHEVRIER: We followed the same practice with wages you will remember, we passed an order which exempted those lines from wage control.

The WITNESS: That is true. And I believe you will recall in connection with the Unemployment Insurance Act when it came in, there being already an Act covering these men, in which they had some equity, we suggested they be excluded from the Canadian laws. I understand that is the view of the previous speaker in respect to this measure and in it we heartily agree.

As I understand this bill, gentlemen, it does not provide an Act, it merely suggests certain amendments to Acts that may now be in effect. We heard from the Canadian Pacific quite a lengthy explanation of the bill and we appreciate that there are different forms of pension plans in effect on different railways. My understanding—and I think it would appear from the reading of the Canadian Pacific pension plan—is that it may be amended or even withdrawn at any time at the discretion of the board of directors of that railway; and, Mr. McNeill stated to you that this plan was the result of consideration between the management and the representatives of the different organizations. That is true, but my understanding of it is that it never came to the point of definitely signing an agreement, or an agreement that could not be broken without the consent of all parties thereto. The specific question under consideration was, I think, whether or not a recommendation or presentation had been made seeking a change in this plan comparable to that now before you. My information is that from time to time discussions have been held but they did not get the desired result.

Now, might I read to you the short brief that we desire to record as the position of the Railway Transportation Brotherhoods:

DOMINION JOINT LEGISLATIVE COMMITTEE RAILWAY TRANSPORTATION BROTHERHOODS

OTTAWA, ONTARIO, July 5, 1947.

The Chairman,
Standing Committee on Industrial Relations,
House of Commons,
Ottawa, Ontario.

Dear Sir:—Concerning bill No. 24, entitled An Act to Amend the Railway Act, we believe the principle of the bill is designed to protect men of many years service with one employer in the pension upon which they depend for security when retired for old age. As stated in the explanatory notes. "the purpose of this amendment is to make it perfectly clear that the pension rights of railway employees, provided such other conditions as are laid down in railway pension plans are met, cannot be lost or abrogated because of a break in service for any of the reasons indicated in the proviso which is added to paragraph (*c*)".

In some plans now in effect the man entering the service must contribute as a condition of employment. Others who were in service prior to the effective date of the present plan are forced to contribute or else sacrifice approximately one fifth of former service as used in computation of pension and they accumulate no further pension regardless of how long they may continue in service. Such obligations and dependency on pension deter men from obtaining protection of insurance, annuity, etc.

At advanced years such opportunity is lost or is beyond his financial capacity because of age and relevant rates. Under such circumstances where pension is cancelled because of a break in his service, the return of contributions made by him leaves the man at a distinct disadvantage and causes a loss he can ill-afford and has no means of recovery. To correct such injustice and hardship we regard this bill as humanitarian in purpose.

We are not unmindful of the fact that pension plans in effect on the respective railways are the result of understanding reached between representatives of organized employee groups and the individual management; the administration of each plan being the function of a committee on which employees and management are represented. The rules governing such pension plans might require amendments to confirm with the principles and purpose of this bill. It should be made clear that the term 'strike' as used in the proviso of the bill is one authorized by the organization holding the contract of service out of which the dispute arose.

We respectfully urge that your committee support the principle of bill No. 24, and to recommend such action as will ensure that necessary changes be undertaken to effect their application by the parties above referred to.

Respectfully submitted,

A. J. KELLY,
Chairman.

WM. L. BEST,
Secreary.

Dominion Joint Legislative Committee, Railway Transportation Brotherhoods.

Mr. Chairman, I do not know that I can add anything more, unless there are some questions that might clarify our brief submission.

The VICE-CHAIRMAN: Are there any questions?

Mr. KNOWLES: May I ask Mr. Kelly if the representations to the company for certain changes in the pension rules have included specific requests on rule 8 (*a*)?

The VICE-CHAIRMAN: Of course, rule 8 (*a*) does not mean very much on the record; what is this rule 8 (*a*)?

Mr. KNOWLES: Rule 8 (*a*) is the one which deals with breaks in service; that no break in service will cause a man to lose his pension right if that break in service takes place—perhaps I had better read it:

> 8 (*a*) . . . . provided, however, that leave of absence, suspension, dismissal followed by reinstatement within one year, or a temporary lay-off on account of reduction of staff, need not necessarily be treated by the committee as constituting a break in the continuity of such service.

That rule is the one that caused the trouble in 1919, and in another similar situation. Now, have you made any specific request that that rule be changed?

The WITNESS: My understanding is that representations have been made seeking to change it in respect to anything arising out of what might be termed strikes or labour troubles, but it qualified that to the extent that it must be an authorized strike, not a wildcast outfit with a few men involved in it.

By Mr. Knowles:

Q. Has the government made any reply to your representations?—A. No, the representations, as I understand it, have not been successful in making any modification of that view.

The VICE-CHAIRMAN: You mean, have not been successful up to date?

The WITNESS: That is right.

By Mr. Knowles:

Q. Have there been any loss of pension rights due to strikes since 1937?—A. I cannot check on the 17 or 18 organizations so I am not prepared to say yes or no, because some of the 17 or 18 organizations might have been in trouble about which I do not know.

Mr. KNOWLES: I think that is correct, I know of none within the last few years. It is because of the unfortunate experiences of 1919 that these representations were made.

The VICE-CHAIRMAN: Mr. Knowles, I think we have covered the subject about these representations. He did that because you asked him to, and I think that is now clear on the record. Have you any other questions you would like to ask?

By Mr. McIvor:

Q. This is another question and it may not be fair. If a man receives a pension, and he has earned it and he is getting it and he passes on, would there be any pension for his wife or would she have to go out and earn her living after that?—A. I understand, Mr. McIvor, that there is a provision in the pension plan whereby a man of his own choice can establish a joint-survivor plan in much the same way as it is handled in other matters. If he desires that protection I believe he has the option of providing for it through a joint-survivor plan.

The VICE-CHAIRMAN: Are there any other questions?

Now, gentlemen, I think we have Mr. Hendricks of the Brotherhood of Railway Trainmen here and while we are on the subject I think we should ask him if he has anything he would like to say on the subject now before the committee.

Mr. Hendricks: I have nothing to add to what has been submitted by the organizations who have appeared before you.

The Chairman: Well, then, gentlemen, that completes the evidence on bill No. 24. We have completed the evidence on bill No. 338. I have the draft report ready for you and before we proceed to consider continuation of them it will be necessary for me to ask all those who are not members of the committee to leave the room, please.

(Committee proceeded in camera.)

The committee adjourned to meet at the call of the chair.

APPENDIX "G"

NEW YORY CENTRAL SYSTEM

FUNDED CONTRIBUTORY RETIREMENT PLAN FOR SALARIED EMPLOYEES AND OFFICERS.

Issue of November 1, 1946.

J. P. MORGAN & CO. INCORPORATED
Trustee of the Retirement Fund.

NEW YORK CENTRAL SYSTEM

Funded Contributory Retirement Plan for Salaried Employees and Officers.

BOARD OF PENSIONS: L. W. HORNING, *Chairman,* JACOB ARONSON, A. D. DUGAN, E. W. JORDAN, W. F. PLACE.

(Address communications to: F. P. Fleuchaus, Secretary, Board of Pensions, 466 Lexington Avenue, New York 17, N.Y.).

NEW YORK CENTRAL SYSTEM FUNDED CONTRIBUTORY RETIREMENT PLAN FOR SALARIED EMPLOYEES AND OFFICERS EFFECTIVE JANUARY 1, 1946.

MEMBERSHIP

1. Eligibility. Every full time salaried employee and officer (hereinafter collectively referred to as "employee') of The New York Central Railroad Company and of such of its affiliated or subsidiary companies as may be authorized to participate in the Plan, who now or hereafter receives regular salary in excess of $300 per month, is eligible for membership in the Plan. The term "salaried employee' shall not include employees whose wages are computed on an hourly, daily, piecework or mileage basis. The term "salary" means regular fixed salary, exclusive of overtime pay, severance pay, special pay, vacation allowances in lieu of vacation, commissions, retainers or fees under contract.

2. Employees eligible in 1946 automatically become members. Every employee, eligible on the effective date of the Plan, automatically becomes a member as of that date and every employee who becomes eligible during the year 1946 automatically becomes a member as of the date of his* eligibility. Any employee who thus becomes a member shall file with the Board of Pensions, within such time as it may by uniform rule prescribe, his written election either to remain as a member or to be excluded from membership.

3. Employees becoming eligible after 1946. Any employee who becomes eligible after 1946 shall become a member upon filing an election to become a member as of the first day of the calender month after he becomes eligible. Such application shall be filed with the Board of Pensions within such time as it shall by uniform rule prescribe.

4. Employees on leave of absence. Any eligible employee on military or other approved leave of absence during the year 1946 shall automatically become a member, but his election to remain or not to remain a member need not be filed until 60 days after he returns to active company service.

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*The masculine pronoun shall be deemed to include the feminine.

5. Employee electing against membership may later become member. Any employee who elects not to become a member or, having become a member, elects to discontinue his membership may later become a member if he files his application for membership before he reaches his compulsory retirement age but he shall not be given credit for service rendered prior to his last becoming a member, except as the Board of Pensions may by uniform rule otherwise prescribe, provided however, that in no event may credit be allowed for years of non-membership service in excess of the rate hereinafter prescribed for prior service.

6. Termination of employee relationship. An employee's membership terminates upon his ceasing to be an employee for any reason whatsoever, including his retirement on a retirement allowance. If later he again becomes a member he shall receive no benefits on account of service rendered by him prior to the date he last became a member. The Board of Pensions may, however, by uniform rule applicable to all employees similarly situated, and upon such terms as it deems appropriate, continue in effect an employee's membership, during a period of absence from service, without loss of creditable service accrued to the date when he left the service; but no credit shall be allowed for the period of absence from Company service, and during his absence no benefit under the Plan shall be available to him except the right to the return of his contributions.

7. Extension of time for elections and applications. The Board of Pensions may, by uniform rule applicable to all employees similarly situated, extend the time for filing any election or application hereinbefore provided for and may permit the filing of any such election or application within such reasonable time after the expiration of the time herein or by its rules provided, as to the Board of Pensions shall seem proper, upon such showing of good faith in the premises as it shall deem necessary, provided the employee shall promptly pay the contributions which otherwise would have been deducted from his salary under the provisions of the Plan, together with regular interest thereon, to the trustee or trustees hereinafter provided for.

COMPULSORY RETIREMENT AGE

8. Schedule of retirements. In the case of all salaried employees and officers eligible for membership in the plan, retirement will be compulsory during the year 1946 at age 70, and beginning with the year 1947 such compulsory retirement age will be reduced one-half year each year until age 65 is attained. Application of this provision is shown in the following schedule:

Employees born in	Will retire on January 1, in year	Or thereafter upon attainment of age
1876	1946	70
1877	1947	69½
1878 (1st six months)	1947	69½
1878 (2nd six months)	1948	69
1879	1948	69
1880	1949	68½
1881 (1st six months)	1949	68½
1881 (2nd six months)	1950	68
1882	1950	68
1883	1951	67½
1884 (1st six months)	1951	67½
1884 (2nd six months)	1952	67
1885	1952	67

Employees born in	Will retire on January 1, in year	Or thereafter upon attainment of age
1886	1953	66½
1887 (1st six months)	1953	66½
1887 (2nd six months)	1954	66
1888	1954	66
1889	1955	65½
1890 (1st six months)	1955	65½
1890 (2nd six months)	1956	65
Each year thereafter	—	65

Retirement shall take effect as of the last day of the calendar month in which the compulsory retirement age is attained.

The foregoing provision with reference to compulsory retirement shall not be applicable to cases where existing working agreements permit employment beyond such ages provided that the individual involved is fully qualified to perform his duties, but such individual not retiring upon attainment of compulsory retirement age, above specified, shall forfeit all benefits under the Plan except the right to have returned to him, with interest, all contributions made by him to the Plan.

A member born prior to June 30, 1890, may, at his election, be retired at any time between attainment of age 65 and his compulsory retirement age.

9. Extensions. In instances where the Company's interests would be served thereby, the Board of Directors of the employing company, or such committee or officers to whom it may delegate the power, may authorize any employee to continue in service beyond his compulsory retirement age, but service thereafter is not creditable under the Plan.

CONTRIBUTIONS

10. Contributions by employees. Beginning at such time, after approval of the Plan, as may be fixed by the Board of Directors, each member shall contribute to the Plan and he shall continue such contributions throughout the period of his membership service. For the period of membership service during the years 1946, 1947 and 1948, a member's contribution shall be at the rate of 3½ per cent of his salary in excess of $300 per month and thereafter it shall be at the rate of 3¾ per cent of such excess. The Company shall deduct members' contributions from their salaries on each and every payroll, and shall pay the sums so deducted to said trustee or trustees.

11. Contributions by the Company. The Company will provide that part of the cost of the Plan not provided by the contributions of members. Company contributions shall consist of "normal" contributions to cover the current accruals, "prior service" contributions to cover the amount of prior service credits, and funds required for administrative expenses. Company contributions shall be payable annually or at such more frequent intervals as may be fixed by the Board of Pensions.

In compliance with regulations of the Internal Revenue Bureau, no employing company shall make contributions to provide benefits for employees, any one of whom owns directly or indirectly more than 10 per cent of the voting stock of such employing company, in an amount exceeding, in any year, in the aggregate, 30 per cent of the contributions for all members of the Plan; and any assets in the Pension Trust which may hereafter result from forfeitures of Company contributions arising from severance of employment, death, or other reason, shall not be used to provide increased benefits for members of the Plan but shall be applied to reduce Company contributions.

12. Computation of Company's normal contribution. The normal contribution of the Company shall be computed as a percentage of the salaries of all members. The normal contribution rate shall be determined, at the time of each actuarial valuation hereinafter provided for, by subtracting from the present value of the total liabilities of the Plan the assets in hand held for such liabilities, the present value of contributions to be made by members, and the present value of any unpaid prior service contributions, and dividing the result by the present value of the future salaries of all members. Following each actuarial valuation, the actuary selected by the Board of Pensions shall certify his recommendation as to the percentage normal contribution rate, and the Board of Pensions after considering such recommendation shall determine the normal contribution payable by the Company.

13. Prior service cost, determination and rate of payment. As soon as practicable after the effective date of the Plan, the actuary shall determine the present value of all benefits for prior service, which value shall be known as "prior service cost". Until the prior service cost is fully liquidated, the Company shall from time to time pay to the trustee or trustees such sums on account thereof as may be determined by the Board of Directors, but the prior service contribution in any year shall not be less than 4 per cent of the initial prior service cost, and the total of the normal and prior service contribution in any year shall not be less than the amounts required, when taken with the present assets of the Plan, to meet all benefit payments to be made during the year.

14. Company contributions irrevocable until all liabilities of Plan satisfied. All contributions made to the Plan by the Company shall be irrevocable and shall be transferred by it to the trustee or trustees, by whom the assets of the Plan are to be held as herein provided, to be used in accordance with the provisions of the Plan in providing the benefits and paying the expenses of the Plan, and neither such contributions nor any income therefrom shall be used for, or diverted to, purposes other than the exclusive benefit of active and retired members or their beneficiaries under the Plan prior to the satisfaction of all liabilities for benefits under the Plan.

BENEFITS

15. Normal retirement allowances. A normal retirement allowance will be paid in monthly installments to a retired member commencing on the last day of the first calendar month of his retirement and continuing until his death. Such monthly allowance shall equal the sum of the following:

(*a*) 1 per cent of the member's average monthly compensation in excess of $300 per month during the ten years of creditable service next preceding retirement multiplied by the number of years of creditable prior-to-membership and membership service.

(b) ·35 per cent of the member's monthly compensation in excess of $300 for each year of creditable membership service in the years 1946, 1947 and 1948, and

(*c*) ·375 per cent of the member's monthly compensation in excess of $300 for each year of creditable membership service thereafter.

In computing retirement allowances: (1) appropriate adjustments shall be made for fractional years; (2) all service rendered as an employee of the Company, or of any of its predecessors (including the United States Railroad Administration), or of any company which is, or at the time such service was rendered was, an affiliate or subsidiary of the Company, shall be included in the member's prior service; (3) only the months for which an employee makes contributions to the Plan shall be included in his membership service; and

(4) only the years of continuous service next preceding date of retirement shall be included. The Board of Pensions may, however, by uniform rule otherwise prescribe in respect of breaks in continuity of service but in no event shall credit be allowed for absences from service.

That part of the retirement allowance which equals 1 per cent for each year of membership service and of prior service shall be deemed to be attributable to Company contributions and shall not exceed a maximum of $1,963.33 per month.

If a retirement allowance amounts to less than $10 per month, payment may be made annually or in a lump sum of equivalent actuarial value as the Board of Pensions may direct. As used in this section and elsewhere in this Plan, the term "equivalent actuarial value" means a benefit of equivalent value when computed at regular interest rates on the basis of the mortality tables last previously adopted by the Board of Pensions.

16. Joint and survivor optional benefits. Not less than one year prior to date of retirement, or upon furnishing proof of good health satisfactory to the Board of Pensions at any time thereafter but prior to date of retirement, any member may elect by written designation filed with the Board of Pensions to convert the normal retirement allowance otherwise payable to him upon retirement into either of the following joint-survivor retirement allowances of equivalent actuarial value:

> Option (a). A reduced retirement allowance payable during such retired member's life, with provision that after his death such reduced allowance shall be paid to the person named in such designation during such person's life, if that person survives; or
>
> Option (*b*). A reduced retirement allowance payable during such retired member's life, with provision that after his death an allowance equal to one-half of such reduced allowance shall be paid to the person named in such designation during such person's life, if that person survives.

Such election shall be wholly inoperative if the member dies before the initial retirement allowance becomes due and payable. Such election shall also become wholly inoperative if the person so designated by the member under option (*a*) or (*b*) dies before the member's initial retirement allowance becomes due and payable, and in such event the retirement allowance shall become payable as if the member had made no election whatsoever.

17. Disability retirement allowance. Any member, below age 65, who has rendered not less than 30 years of continuous service, shall be retired on a disability retirement allowance if the Board of Pensions finds that such member is totally incapacitated, mentally or physically, for the performance of duty and that such incapacity is likely to be permanent. The Board of Pensions may avail itself of, or require, such medical examinations as it may deem appropriate to enable it to determine the question of disability. The disability retirement allowance shall be computed for creditable years of service in the same manner as is provided for the computation of normal retirement allowances, except that such disability allowance shall be reduced by the amount of any payments which the Company may have made or may be obliged to make to or for the employee by way of settlement or by reason of any award, order or judgment in the employee's favour for injuries or impairment of health alleged my him or found by the Board of Pensions to have caused or substantially contributed to the disability. Until attainment of age 65, the Board of Pensions may require an individual on disability retirement allowance to undergo successive medical examinations and if, on the basis thereof, it finds that such individual has regained his earning capacity, the Board of Pensions may discontinue his retirement allowance; if it finds that such disability has been

partially removed and earning capacity regained in part, the Board of Pensions may proportionately reduce the retirement allowance.

In no event, however, shall any such reduction or discontinuance of retirement allowance deprive the member of his rights under the Plan to the return of his contributions with regular interest.

18. Return of member's contributions. Any member, upon ceasing to be an employee due to any cause other than death or retirement under the Plan, shall within sixty days thereafter be paid the amount of his contributions to the Plan together with such part, not less than two-thirds, of regular interest thereon as the same shall have been last previously fixed by the Board of Pensions. If such member had previously been paid any disability allowances, the amount thereof shall be deducted in the computation of the returnable contributions.

Upon receipt of proof, satisfactory to the Board of Pensions, of the death of a member prior to or after retirement the amount of such member's contributions with regular interest thereon, less the aggregate of retirement allowances theretofore paid to him, shall be paid to the beneficiary previously designated by written instrument on file with the Board of Pensions or, if such beneficiary shall not survive the deceased member or if no such beneficiary shall have been designated, such payment shall be made to the estate of the deceased member.

19. Regular interest defined. "Regular interest" as used in the Plan means interest at such rate, compounded annually, as shall from time to time be determined by the Board of Pensions for use in actuarial calculations required in connection with the Plan. Until the Board of Pensions shall hereafter otherwise determine, such rate shall be 2½ per cent.

20. Non-alienation of benefits. Except as the law may otherwise require, and except as specifically provided in the Plan, no benefit under the Plan shall be subject to anticipation, alienation, sale, assignment, pledge, encumbrance or charge, and any attempt so to do shall be void; and no benefit under the Plan shall in any manner be liable for or subject to the debts, liabilities, or torts of the person entitled to such benefit nor be subject to attachment, execution, garnishment, or other transfer in bankruptcy or otherwise. If any member, retired member or any other beneficiary under the Plan becomes bankrupt or attempts to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge any benefit under the Plan, except as specifically provided herein, then, unless the law shall otherwise require, such benefit shall, in the discretion of the Board of Pensions, cease and determine, and in that event the Board of Pensions may hold or apply the same to or for the benefit of such member or retired member or other beneficiary, his spouse, children, or other dependents, or any of them, in such manner and in such proportions as the Board of Pensions may deem proper.

21. Suspension and cancellation of allowance. Anything in the Plan to the contrary notwithstanding, if the Board of Pensions finds that any retired member is engaged in conduct prejudicial to the Company's interests, and if such retired member continues to be so engaged after notice to desist, the Board of Pensions may suspend his retirement allowance. Such suspension shall continue until removed by notice from the Board of Pensions, but after such suspension has continued for one year the Board of Pensions shall cancel such member's retirement allowance. Neither such suspension nor such cancellation shall deprive such member of his rights under the Plan to the return of his contributions, with regular interest.

MANAGEMENT OF THE FUNDS

22. Assets to be held in special Trust. All assets of the Plan shall be held as a special trust, by corporate or individual trustee or trustees as the Board of Directors may determine, in trust for use, in accordance with the Plan, in providing the benefits and paying the expenses of the Plan, and no part of the corpus or income shall be used for, or diverted to, purposes other than for the exclusive benefit of members, retired members and their beneficiaries under the Plan, prior to the satisfaction of all liabilities with respect to such members and retired members and their beneficiaries under the Plan.

23. Trustees, their appointment, powers and removal. The trustee or trustees shall be appointed from time to time by the Board of Directors by appropriate instrument, in writing, with such powers in the trustee or trustees as to investment, reinvestment, control and disbursement of the funds as the Board of Directors shall approve and as shall be in accordance with the Plan. Said Board may remove any trustee at any time, and in the event of vacancy by resignation or otherwise said Board shall designate a successor trustee or trustees.

BOARD OF PENSIONS

24. Membership. The Board of Directors shall appoint the Board of Pensions which shall consist of not less than five members. No person shall be ineligible for membership on the Board of Pensions by reason of the fact that he is also an officer or employee of the Company, provided, however, that he shall not participate in action on his own retirement allowance. No member of the Board of Pensions who is at the same time an officer or employee of the Company shall receive compensation for his services as such member.

25. Officers and agents of Board of Pensions. The Board of Pensions shall elect a Chairman, a Secretary and an Assistant Secretary. The Secretary and Assistant Secretary may, but need not, be members of the Board of Pensions. That Board may appoint from its members such committees with such powers as it shall determine, and may authorize its Chairman, its Secretary, its Assistant Secretary or any of its other officers or agents to execute orders for the payment of benefit allowances and refunds as well as other orders, certificates and instruments within the jurisdiction of the Board. It may employ such actuarial, accounting and clerical service as may be required in the administration of the Plan.

26. Functions of Board of Pensions. The Board of Pensions shall be charged with the general administration of the Plan and with the responsibility of carrying out its provisions. A majority of its members shall constitute a quorum for the transaction of business. All resolutions or other action taken by the Board of Pensions at any meeting shall be by vote of a majority of such Board. It shall from time to time make rules and regulations, not inconsistent with the Plan, for the conduct of its proceedings and for the administration of the Plan. Any such rules and regulations of the Board of Pensions shall be uniform in their nature and applicable to all persons similarly situated. The findings and decision of the Board of Pensions on any question or matter within its jurisdiction shall be conclusive and binding upon all persons in interest. No member of the Board of Pensions shall be personally liable for errors of judgment nor for mistakes or losses unless resulting from his own wilful misconduct.

27. Board of Pensions to adopt service and mortality tables. The Board of Pensions shall adopt, from time to time, service and mortality tables for use in all actuarial calculations required in connection with the Plan and shall establish the rates of Company contributions to the Plan. As an aid to the

Board of Pensions in adopting such tables and in fixing such rates of contribution, the actuary designated by it shall make annual actuarial valuations of the contingent assets and liabilities of the Plan and shall certify to the Board of Pensions the tables and rates of contribution which he recommends for use by it.

ACCOUNTS

28. Classification. All assets of the Plan shall be divided among three accounts which shall be known as (1) the Members' Account, (2) the Accumulation Account, and (3) the Retirement Reserve Account. Contributions to and payments from these accounts shall be made in the manner stated in the next three sections.

29. Members' Account. The Members' Account shall be the account in which shall be held the members' individual accumulated contributions. The contributions of all members shall be credited to this account as made and interest allowable thereon credited when transferred to this account. All refunds of the members' individual contributions (and interest thereon) prior to retirement shall be charged to this account. Upon the retirement of a member the amount, at that time, of his contributions and regular interest thereon shall be transferred from the Members' Account to the Retirement Reserve Account.

30. Accumulation Account. The Accumulation Account shall be the account in which shall be accumulated all reserves for the payment of retirement allowances payable from the contributions of the Company. All Company contributions and all interest and other earnings of the invested assets of the Plan shall be credited to this account. All interest to be credited to members' accounts and the required interest on the reserve in the Retirement Reserve Account shall be transferred annually to the respective accounts from the Accumulation Account. Upon the retirement of a member an amount equal to the present value of the future benefit payable to such retired member less the amount of his contributions (and interest thereon) transferable from the Members' Account, if any, shall be transferred from the Accumulation Account to the Retirement Reserve Account. The expenses of the administration of the Plan not paid directly by the Company shall be charged to the Accumulation Account.

31. Retirement Reserve Account. The Retirement Reserve Account shall be the account in which shall be held the reserves on all retirement allowances, or benefits in lieu thereof, payable on account of members who have retired or on account of beneficiaries of such retired members. All retirement allowances or other benefits payable to or on account of such persons shall be charged to this account.

32. Annual Reports of Board of Pensions. The Board of Pensions shall prepare annually a report showing in reasonable detail the assets and liabilities of the Plan and giving a brief account of the operation of the Plan for the past year. Such report shall be submitted to the Board of Directors of the Company and a copy thereof filed in the office of the Board of Pensions, where it shall be open to inspection by any member.

CERTAIN RIGHTS AND OBLIGATIONS OF COMPANY

33. Right to discontinue, suspend or reduce Company contributions. The Board of Directors may for any reason and at any time discontinue, suspend or reduce its contributions below those required by the provisions of this Plan, in which event all benefits under the Plan shall be reduced to such amounts as

actuarial valuation shall indicate the contributions theretofore made together with the future reduced contributions, if any, will provided, and in the event of such reduction of benefits, a proportionate reduction will be made in the contributions which are required from members.

34. Right to terminate plan. The Plan may be terminated at any time by the Board of Directors, in which event all of the assets of the Plan shall be used for the benefit of members, retired members and their beneficiaires under the Plan, and for no other purpose, except that such excess assets as may exist because of erroneous actuarial computations may be repaid to the Company. Each member or other person entitled to a retirement allowance shall be entitled to his proportionate share of the full amount of the assets of the Plan as a result of all previous contributions made by him and by the Company in respect of the benefits payable to him or on his account, in the proportion that the liabilities of the Plan on his account bear to the total liabilities of the Plan as determined by the Board of Pensions on the basis of actuarial valuation. The Board of Pensions may require such members or other persons to withdraw such amounts in cash or in the form of immediate or deferred annuities either under the Plan or from an outside source as it may determine.

35. Restrictions on rights of highest paid employees. Notwithstanding any other provisions in this Plan to the contrary, the retirement allowances or other benefits provided from funds of the trust for those members (including retired members) who are among the twenty-five most highly compensated employees as of January 1, 1946, shall be subject to the conditions set forth in this section. If, on any date prior to January 1, 1956, this Plan is discontinued, (1) no monthly retirement allowance commencing at or after age 65 which is payable after such date to any such member shall exceed one-twelfth of the greatest of (*a*) $1,500, or (*b*) a retirement allowance, which on the basis of the mortality tables and interest rate used in the reserve calculations, as they were on January 1, 1946, shall have a present value equal to 20 per cent of such member's compensation, not in excess of $50,000, received during each year from January 1, 1946, up to the date that the Plan is discontinued, or (c) a retirement allowance, which on the basis of the mortality tables and interest rate used in the reserve calculations, as they were on January 1, 1946, shall have a present value equal to $20,000 on the date that the Plan is discontinued, exclusive, in each case, of such annuity as can be provided on the basis of such mortality tables and interest rate from the contributions made by such member, and (2) no monthly retirement allowance under Section 17 which is payable after such date to or with respect to any such member living on such date shall exceed the amount which would have been payable under the same section and commencing at the same time if the retirement allowance otherwise payable commencing at age 65 were the greatest of the amounts under (*a*), (*b*) or (*c*) in this sentence. If any other benefits are provided in lieu of retirement allowances, the value of all benefits and any retirement allowances provided for any such member upon or after such discontinuance shall not exceed the actuarial value as of the date of such discontinuance of the retirement allowances which may thereafter be provided in accordance with the previous sentence. If, in any year prior to January 1, 1956, the contributions to the trust have been insufficient to meet the costs of the Plan, no retirement allowance or other benefits provided for any such member shall exceed those which would be provided if the Plan were discontinued at the end of such year unless and until any later date when contributions have been sufficient, to meet the costs of the Plan. For the purpose of this section, in determining whether the costs of the Plan have been met, there shall be used the method of actuarial valuation, the plan of funding and the assumptions as to future experience used in 1946. If, at any time prior to

January 1, 1946, the Plan is changed so as to reduce the scale of retirement allowances to be provided thereafter for any other members, such change, shall, for the purpose of this section only, be considered a discontinuance unless the Company has then received a written ruling from the Commissioner of Internal Revenue that, in his opinion, such change will not result in failure of the Plan to meet the requirements of Section 165(*a*) of the Internal Revenue Code. In the event that it should subsequently be determined by statute, court decision, ruling by the Commissioner of Internal Revenue, or otherwise, that the provisions of this section are no longer necessary to qualify the Plan under the Internal Revenue Code, this section shall be ineffective without the necessity of further amendment of the Plan.

36. Plan confers no rights to continued employment. The establishment of the Plan shall not be construed as conferring any legal rights upon any employee or any person for a continuation of employment, nor shall it interfere with or abridge the rights of the Company to discharge any employee and to treat him without regard to the effect which such treatment might have upon him as a member of the Plan.

37. Deduction for new social security taxes. If by any future law, the Company is required to pay, in the form of taxes, pensions, or other allowances, to or on account of any active or retired member or his beneficiary any pension, allowance or similar benefit, over and above those now provided by the Railroad Retirement Act, the Board of Directors may require that the actuarial equivalent therof be deducted from that part of retirement allowances provided by Company contributions.

38. Amendment of Plan. Subject to the provisions hereinafter set forth, the Board of Directors reserves the right at any time and from time to time to modify or amend in whole or in part any or all of the provisions of the Plan; provided that no modification or amendment may be made which by reason thereof will deprive any member or retired member or other person receiving a retirement allowance, without his consent, of any benefits under the Plan to which he would otherwise be entitled by reason of the accumulated assets held under the Plan on his account at that time, and provided that no such modification or amendment shall make it possible for any part of the assets of the Plan to be used for, or diverted to, purposes other than for the exclusive benefit of members and retired members and their beneficiaries under the Plan prior to the satisfaction of all liabilities with respect to such members and retired members and their beneficiaries under the Plan. Notwithstanding the foregoing provision, any modification or amendment of the Plan may be made which the Board of Directors deems necessary or appropriate to bring the Plan into conformity with governmental requirements or regulations in order to qualify the Plan for tax benefits.

MISCELLANEOUS

39. System application. Unless the context indicates otherwise "Company" shall mean The New York Central Railroad Company or any of its affiliated or subsidiary companies authorized by the Board of Directors of The New York Central Railroad Company and of such affiliated or subsidiary company to participate in the Plan and which agrees to make appropriate contributions based on creditable service of members of the Plan. Unless the context indicates otherwise "Board of Directors" means the Board of Directors of The New York Central Railroad Company.

40. Governing law. Except to the extent that Federal law shall be controlling, this Plan shall be construed and administered under the laws of the State of New York.

ELECTION TO REMAIN AS A MEMBER OF NEW YORK CENTRAL RETIREMENT PLAN

To the Board of Pensions:

The undersigned employee in the service of The New York Central Railroad Company hereby elects to remain a member in the New York Central System Funded Contributory Retirement Plan for Salaried Employees and Officers; and in so doing accepts the terms and conditions of the Plan, a printed copy of which (dated November 1, 1946) was furnished to the undersigned and is by reference made a part of this application; and for his contributions under the Plan, the undersigned hereby authorizes The New York Central Railroad Company to make appropriate deductions from any compensation earned by him, in amounts as set forth in the Plan, and make payment of such deductions to the Trustee as provided in the Plan; and agrees that this shall constitute an assignment of such moneys in advance to the Trustee for the purposes of the Plan.

Dated.........................., 1946.

....

(*Signature*)

Occupation: ....

Office or

Department: ....

Location: ....

ELECTION TO BE EXCLUDED FROM MEMBERSHIP IN NEW YORK CENTRAL RETIREMENT PLAN

To the Board of Pensions:

The undersigned employee in the service of The New York Central Railroad Company, having been furnished a printed copy of the New York Central System Funded Contributory Retirement Plan for Salaried Employees and Officers (dated November 1, 1946) and having been advised of his eligibility for membership in said Plan, hereby elects to be excluded from membership in said Plan.

Dated.........................., 1946.

....

(*Signature*)

(Do not use this form if you have elected to become a member.)

Occupation: ....

Office or

Department: ....

Location: ....

APPENDIX "H"

NEW YORK CENTRAL RAILROAD

Rules for Administration of Supplementary Pension System for employees other than members of the Funded Contributory Retirement Plan for Salaried Employees and Officers.

ELIGIBILITY

1. *General Eligibility.* All employees other than those who become members of the Contributory Retirement Plan for Salaried Employees and Officers, who shall have had not less than twenty years of net continuous service, if they otherwise qualify under the provisions hereof, shall be eligible for pensions as provided in these rules.

2. *Schedule of Retirements.* Only those employees shall be eligible for pension hereunder who shall retire from the service at the end of the calendar month in which they shall have attained the retirement age shown in the following schedule, to wit:

Employees born in	Will retire on January 1, in year	Or thereafter upon attainment of age
1876	1946	70
1877	1947	69½
1878 (1st six months)	1947	69½
1878 (2nd six months)	1948	69
1879	1948	69
1880	1949	68½
1881 (1st six months)	1949	68½
1881 (2nd six months)	1950	68
1882	1950	68
1883	1951	67½
1884 (1st six months)	1951	67½
1884 (2nd six months)	1952	67
1885	1952	67
1886	1953	66½
1887 (1st six months)	1953	66½
1887 (2nd six months)	1954	66
1888	1954	66
1889	1955	65½
1890 (1st six months)	1955	65½
1890 (2nd six months)	1956	65
Each year thereafter	——	65

An employee, otherwise eligible hereunder, born prior to June 30, 1890, may at his election retire and receive a pension hereunder at any time between attainment of age 65 and the then current retirement age specified in the foregoing schedule.

COMPUTATION AND PAYMENT OF PENSIONS

3. *Computation.* If an eligible employee's average monthly basic compensation during his last ten years of service exceeds $300 his pension hereunder shall consist of a monthly allowance equal to 1 per cent of such average monthly basic compensation in excess of $300 multiplied by the number of years of net continuous service.

In order to conform such pensions to retirement allowances of members of the Company's Contributory Retirement Plan for Salaried Employees and Officers (with appropriate adjustment for employee contributions in the case of the latter group) and in order, during the transitional period, to conform pensions computed in accordance with the provisions of the preceding paragraph to pensions calculated under the rule heretofore in effect, the monthly pensions of those qualifying under these rules with more than 40 years of continuous service shall be supplemented to the extent that an amount equal to $3 for each year of continuous service in excess of 40 exceeds the sum of the following:

(*a*) ·35 of 1 per cent of average basic monthly compensation in excess of $300 for each year of service beginning November 1, 1946, to and including the year 1948; and

(*b*) ·375 of 1 per cent of average basic monthly compensation in excess of $300 for each year of service thereafter.

Appropriate adjustments shall be made for fractional years.

4. *Items Excluded in Computation.* The term "basic compensation" shall not include overtime pay, whether prorata or punitive, severance pay, special pay, vacation allowances in lieu of vacation, commissions, tips, bonuses, or retainers or fees under contract. To the extent that available Company records do not disclose the amount of such excluded portions of earnings, the Board of Pensions may estimate the amount thereof.

5. *Service and Employment Defined.* The terms "service" and "employment" as used herein refer to exclusive active employment with any of the railroads comprising the New York Central System and shall include service with predecessor companies or with other railroads prior to ownership, lease or operation thereof by any of the railroads comprising said System. It shall also include joint service and employment where joint facilities are operated through a separate entity in the interests of this and other companies, and the Board of Pensions shall determine the service and proportion of compensation to be used in computing the pension. Service shall be considered as continuous from the last date of entry into service to the date of retirement. Authorized absences of one month or less shall not be considered as time out of service. Other absences must be covered by leave or furlough and in any case shall not exceed one year for any single period or the absence will be considered a break in the continuity of service: however, where absences are involuntary, resulting from injury or illness, the Board of Pensions may, in its discretion, give credit for such absences as for actual service even though such involuntary absences exceed a period of one year.

6. *Disability Retirement and Pension.*—Any employee below age 65 who has rendered not less than thirty years of net continuous service, and who is found by the Board of Pensions to be totally and permanently disabled for regular employment for hire, shall be retired and, if otherwise qualified, shall

be eligible for a pension hereunder. The pension of a disabled employee shall be limited to the excess, if any, over the payments which the Company may have made or may be obliged to make to or for the employee by way of settlement, or by reason of any award, order or judgment in the employee's favour, for injuries or impairment of health alleged by him, or found by the Board of Pensions, to have caused or substantially contributed to his disability.

7. *Time of Payment.*—Pensions will be paid in monthly instalments, commencing on the last day of the first callendar month of retirement.

8. *Discontinuance for Improper Conduct.*—Pensions shall be discontinued in event of engagement by a pensioner in the service of any competitor of the Company, and the Board of Pensions may withhold or discontinue a pension for misconduct on the part of an employee or pensioner prejudicial to the Company's interests.

9. *Assignment Not Recognized.*—No assignment of pensions will be permitted or recognized.

BOARD OF PENSIONS

10. *Appointment, Duties, Powers.*—This pension system shall be administered by a Board of Pensions consisting of not less than five (5) members to be appointed by the President of the Company. The Board of Pensions shall elect a Chairman from among its members and shall appoint a Secretary, but such Secretary need not be a member of the Board. The Board may appoint such committees with such powers as it shall determine and may authorize its Chairman or Secretary, or any of its other officers or agents, to execute orders for the payment of pensions as well as other orders, certificates or instruments within the jurisdiction of the Board. The Board of Pensions shall be charged with the general administration of this pension system and with the responsibility for carrying out its provisions. A majority of its members shall constitute a quorum for the transaction of business. It shall from time to time make rules and regulations not inconsistent with this pension system for the conduct of its proceedings and for the administration of the system. The findings and decisions of the Board of Pensions on questions or matters within its jurisdiction shall be conclusive and binding on all persons in interest.

MISCELLANEOUS

11. *No Rights to Continued Employment or to Pension Conferred.*—No action of the Company, or in its behalf, in establishing or administering this pension system, shall be construed as giving to any employee a right to be retained in the service or any present or prospective right or claim to a pension.

12. *System Voluntary. Company May Modify or Terminate at Any Time.*—This pension system is voluntarily and gratuitously established by the Company at its own sole expense and the Company reserves the right from time to time and at any time to modify or terminate any or all pensions hereunder or heretofore granted, to establish a lower or different basis of pension allowance, or otherwise to modify or terminate this pension system in whole or in part.

New York, N.Y.

November 1, 1946.

is in the form of regulations.

APPENDIX "J"

(*See Minutes of Proceedings of 30th June and 3rd July*)

DOMINION AND PROVINCIAL LEGISLATION

RELATING TO COLLECTIVE BARGAINING

A comparison of Federal and Provincial Acts submitted by the Canadian
Congress of Labour to the Industrial Relations Committee of the House
of Commons, June 30, 1947, as an appendix to a brief on The
Industrial Relations and Disputes Investigation Bill
(Bill 338 of 1947)

PREPARED BY THE RESEARCH DEPARTMENT
CANADIAN CONGRESS OF LABOUR
OTTAWA, CANADA.

NOTES

1. This compilation has not attempted to reproduce the whole of the legislation in each case, but only those parts of it which seem to the compilers to be of substantial importance to trade unions. For example, the sections of the various Acts and Regulations on the filing of information by unions have been left out. It may well be that sections have been left out which are really of some importance, and it is also likely that various errors have crept in.

2. In the sections of the Manitoba and Ontario legislation, the words "this Act" have been used for the sake of simplicity and uniformity. The words in the original are "these regulations," since most of the legislation in these provinces

DEFINI

Dominion Bill	**British Columbia Act**	**Alberta Act**	**Saskatchewan Act**	**Manitoba Act**
2 (1) (b) "Bargaining agent" means a trade union that acts on behalf of employees (i) in collective bargaining: or (ii) as a party to a collective agreement with their employer;	2 (1) "Bargaining agent" means a trade union that acts on behalf of employees in collective bargaining with their employer or as a party to a collective agreement, with their employer;	57 (1) (b) "Bargaining agent" or "collective bargaining agency" means a trade union or *organization or association of employees* which (as in Dominion Bill), *and includes elected or appointed representatives of the employees;*		
	2 (1) "Bargaining authority" means either a certified bargaining agent *or certified bargaining representatives;*			
2 (1) (c) "certified bargaining agent" means a bargaining agent that has been certified under this Act and the certification of which has not been revoked;	2 (1) "Certified bargaining agent" means a bargaining agent certified under this Act whose certification has not been revoked;			
	2 (1) *"Certified bargaining representatives" means bargaining representatives certified under this Act whose certification has not been revoked;*			2 (1) (c) "Certified bargaining representative" means a bargaining representative certified by the Board under this Act;
2 (1) (d) "Collective agreement" means an agreement in writing between an employer or an employers' organization acting on behalf of an employer, on the one hand, and a bargaining agent of his employees, on behalf of the employees, on the other hand, containing terms or conditions of employment of employees that include provisions with reference to rates of pay and hours of work;	2 (1) "Collective agreement" means an agreement in writing between an employer or an employers' organization, on the one hand, and a bargaining authority, on the other hand, containing provisions with reference to rates of pay, hours of work, or other conditions of employment;	57 (1) (c) "Collective agreement" means an agreement in writing between an employer or an employers' organization acting on behalf of an employer, on the one hand, and a bargaining agent of his employees, on behalf of the employees, on the other hand, containing provisions with reference to rates of pay, hours of work, or other terms or conditions of employment of the employees, and signed by the parties thereto;	2 (3) "Collective bargaining agreement" means an agreement in writing between an employer and a trade union setting forth the terms and conditions of employment or containing provisions in regard to rates of pay, hours of work, or other working conditions.	2 (1) (d) "Collective agreement" means an agreement in writing between an employer or an employers' organization on the one hand and a trade union *or an employees' organization* on the other hand containing provisions with reference to rates of pay, hours or work or other working conditions;
2 (1) (e) "Collective bargaining" means negotiating with a view to the conclusion of a collective agreement or the renewal or revision thereof, as the case may be; and "bargaining collectively" and "bargain collectively" have corresponding meanings;	2 (1) "Collective bargaining" means negotiating with a view to the conclusion of a collective agreement or the renewal or revision thereof, *or to the regulation of relations between an employer and employees;*	57 (1) (a) "Bargain Collectively" means to negotiate *in good faith* with a view to the conclusion of a collective labour agreement or an amendment or amendments to an existing agreement, and "collective bargaining" shall have a similar meaning;	2 (1) "Bargaining collectively" means negotiating *in good faith* with a view to the conclusion of a collective bargaining agreement, the embodiment in writing of the terms of agreement arrived at in negotiations *or required to be inserted in a collective bargaining agreement by this Act, the execution by or on behalf of the parties of such written agreement and the negotiating from time to time for the settlement of disputes and grievances of employees covered by the agreement;*	

TIONS

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
	See below.		Same as Dominion Bill.	
			Same as Dominion Bill.	
Same as Manitoba.		Same as Manitoba.		
Same as Manitoba.	2 (e) "Collective agreement" or "agreement" means any arrangement respecting conditions of employment entered into between persons acting for one or more associations of employees, and an employer or several employers or persons acting for one or more associations of employers;	Same as Manitoba.	Same as Dominion Bill.	
			Same as Dominion Bill.	

DEFINITI

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
2 (1) (f) "Conciliation Board" means a Board of Conciliation and Investigation appointed by the Minister in accordance with section thirty-five of this Act;	2 (1) (g) "Conciliation Officer" means a person whose duties include the conciliation of disputes and who is under the control and direction of the Minister;		No definition. See below.	2 (1) (e) "Conciliation Board" means a Board appointed by the Minister under section . . .
2 (1) " Conciliation Board" means a Board of Conciliation appointed by the Minister in accordance with section 48 of this Act;	2 (1) " Conciliation Officer" means a person *appointed as such under the provisions of this Act;*	57 (1) (d) "Conciliation Commissioner" means a Conciliation Commissioner *appointed under the provisions of this Part;*		
2 (1) (h) "Dispute" or " industrial dispute " means any dispute or difference or apprehended dispute or difference between an employer and one or more of his employees or a bargaining agent acting on behalf of his employees, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done by him or by the employee or employees as to privileges, rights and duties of the employer or the employee or employees;	2 (1) "Dispute" means a dispute or difference, or apprehended dispute or difference, between an employer and one or more of his employees or a bargaining authority as to matters or things affecting or relating to *conditions* of employment or work done or to be done by an employer or by the employee or employees, or as to privileges, rights and duties of the employer or the employee or employees; and without limiting the generality of the foregoing, includes a dispute or difference relating to:	57 (1) (e) "Dispute" means any dispute or difference between an employer and *a majority of his employees, or a majority of a unit or classification of his employees,* as to matters or things affecting or relating to work done or to be done by him or them, or as to the privileges, rights, and duties of employers or employees, and in particular and without limiting the generality of the foregoing, includes all matters relating to,—		
	2 (1) (a) Wages, allowances, or other remuneration of employees; or the price paid or to be paid for services; hours of work; vacations with pay; holidays; or sickness benefits; (b) Sex, age, qualification or status of employees; (c) Employment of children or any person or class of persons, or the dismissal of or refusal to employ a particular person or persons or class of persons; (d) Claims by an employer or an employee as to whether and, if so, under what circumstances preference of employment should or should not be given to one class of persons over another; and (e) Any custom or usage.	57 (1) (e) (i) the wages, allowance, or other remuneration of employees or the price paid or to be paid in respect of employment; (note omissions) (ii) the hours of employment, sex, age, qualifications, or status of employees, *and the mode, terms and conditions of employment;* (iii) employment of children or any person or persons or class of persons, or the dismissal or refusal to employ any particular person or persons or class of persons; (iv) claims on the part of an employer or any employee as to whether and, if so, under what circumstances preference of employment should or should not be given to one class over another class of persons being or not being members of labour or other organizations, British subjects or aliens; (v) *materials supplied and alleged to be bad, unfit, or unsuitable, or damage alleged to have been done to work;* (vi) Any established custom or usage, either general or in the particular district affected.		

ONS—*Conc.*

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
Same as Manitoba.	No definition. See below.	Same as Manitoba.	Same as Dominion Bill.	
			Same as Dominion Bill.	
			Same as Dominion Bill.	

DEFINITI

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
2 (1) (i) "Employee" means a person employed to do skilled or unskilled manual, clerical or technical work, but does not include (i) a manager or superintendent, or any other person who, in the opinion of the Board, exercises management functions or is employed in a confidential capacity in matters relating to labour relations; (ii) a member of the medical, dental, architectural or legal profession qualified to practice under the laws of a province and employed in that capacity;	2 (1) Same as Dominion Bill, but says employed "by an employer." (a) A person employed in a confidential capacity or a person who has authority to employ or discharge employees; (b) *a person who participates in collective bargaining on behalf of an employer, or who participates on the consideration of an employer's labour policy;* (c) *a person serving an indenture of apprenticeship under the "Apprenticeship Act."* (d) *a person employed in domestic service, agriculture, horticulture, hunting or trapping;*	2 (g) "*Employee*" *means and includes every person engaged in any industry who is in receipt of or entitled to compensation for labour or services performed whether the labour or services is performed on the premises of the employer or of the employee or elsewhere, and whether the compensation is on the basis of time or of the amount of work performed or of piece work, or is otherwise computed;* (*But note the introductor ywords: "unless the context otherwise requires."*) 3. This Act shall apply to all . . . employees in the Province except persons who are farm labourers or domestic servants in private houses.	2 (5) Employee" means any person in the employment of an employer, except any person having authority to employ or discharge employees or *regularly acting on behalf of management in a confidential capacity, and includes any person on strike or locked out in a current labour dispute who has not secured permanent employment elsewhere;*	Same as Dominion Bill. (i) a person employed in a confidential capacity or having authority to employ or discharge employees; or (ii) a person employed in domestic service, agriculture, horticulture, hunting or trapping;
2 (2) No person shall cease to be an employee within the meaning of this Act by reason only of his ceasing to work as the result of a lockout or strike or by reason only of dismissal contrary to this Act.	Same as Dominion Bill.	57 (2) Any person who was immediately before the occurrence of any strike or lockout or before his dismissal, as the case may be, an employee within the meaning and for the purposes of this Part, shall be deemed to be an employee, . . . (a) in the case of a strike or lockout until the same is terminated; or (b) in the case of a dismissal where an application for the appointment of a Conciliation Commissioner is made under this Part in respect thereof, until the application has been disposed of; or (c) in the case of a dismissal where an application for the certification of a bargaining agent has been applied for (sic) until the application has been disposed of.	See immediately above.	2 (2) Same as Dominion Bill except that it begins "No employee shall cease to be such," and ends "or his wrongful dismissal."
2 (1) (j) "Employer" means any person who employs one or more employees; 54. Part I of this Act shall apply in respect of any corporation established to perform any function or duty on behalf of the Government of Canada and in respect of employees of such corporation, except any such corporation, and the employees thereof, that the Governor in Council, excludes from the provisions of Part I. 55. Except as provided by section fifty-four, Part I of this Act shall not apply to His Majesty in right of Canada or employees of His Majesty in right of Canada.	2 (1) "Employer" means any person who employs more than one employee:	2 (h) "Employer" means and includes every person, corporation, partnership, firm, manager, representative, contractor and subcontractor having control and direction of or responsible directly or indirectly for the employment of and the payment of wages to any employee; (Note again: "unless the context otherwise requires.")	2(6) "Employer" means: (a) Any employer who employs *three or more* employees; (b) Any employer who employs *less than three employees if at least one of the said employees is a member of a trade union which includes among its membership employees of more than one employer; and includes His Majesty in the right of Saskatchewan* but does not include any employer whose relations with his employers are. . . within the exclusive legislative jurisdiction of the Parliament of Canada . . . or are otherwise withdrawn so far as the matters dealt with by this Act are concerned from the legislative jurisdiction of the Legislature of Saskatchewan by any valid law or regulation passed by authority of the Parliament of Canada.	2 (1) (g) "Employer" means a person employing more than one employee . . . *but does not include His Majesty or any person or corporation acting on behalf or as an agent of His Majesty;*

ONS—*Con.*

Ontario Act	**Quebec Act**	**New Brunswick Act**	**Nova Scotia Act**	**P E I Act**
Same as Manitoba.	2 (a) "Employee" means any *apprentice*, unskilled labourer or workman skilled workman or journeyman, artisan, clerk or employee, *working individually or in a crew or in partnership;* but it does not include: (1) persons employed as manager, superintendent, foreman *or representatives of an employer in his relations with his employees;* (2) the directors and managers of a corporation; (3) *any person belonging to one of the professions contemplated in chapters* 262 *to* 275 *or admitted to the study of one of such professions;* (4) domestic servants or persons employed in an agricultural exploitation;	Same as Manitoba.	Same as Dominion Bill. 2 (1) (i) (i) a manager or superintendent, or any other person who in the opinion of the Board is employed in a confidential capacity in matters relating to labour relations or who exercises management functions: (ii) same as Dominion Bill, but adds "engineering."	3. "Employee" as used herein shall not include officers, officials or persons employed in any confidential capacity.
Same as Manitoba.	(b) "Agricultural exploitation" means a farm developed by the farmer himself or through employees; *Note omission.*	Same as Manitoba.	Same as Dominion Bill.	
Same as Manitoba.	2 (c) "Employer" means anyone who has work done by an employee, but it *does not include the railways under the jurisdiction of the Parliament of Canada;*	Same as Manitoba but adds: "or any board, commission or other body established, organized or functioning as an administrative unit of the Province";	Same as Dominion Bill. 68. *This Act shall apply to all matters within the legislative jurisdiction of this Province except that it shall not apply to His Majesty in the right of his Province of Nova Scotia or to employees of His Majesty in the right of his Province of Nova Scotia.*	14. This act shall not apply to any employer who does not regularly employ more than fifteen employees.

DEFINITI

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
2 (1) (k) "Employers' organization" means an organization of employers formed for purposes including the regulation of relations between employers and employees;	2 (1) "Employers' organization" means an organization of employers that *has for its objects, or one of its objects,* the regulating of relations between employers and employees;	57 (1) (f) "Employers organization" means an organization of employers formed for the purpose of regulating relations between employers and employees;	2 (7) "*Employer's agent*" means:— (a) *Any person or* association acting on behalf of an employer. (b) *Any officer, official, foreman, or other representative or employee of an employer acting in any way on behalf of an employer in respect to hiring or discharging or any of the terms or conditions of the employees of such employer.*	2 (1) (h) "Employers' organization" means an organization of employers formed to regulate relations between employers and employees.
2 (1) (p) "Strike" includes a cessation of work, or refusal to work or to continue to work, by employees, in combination or in concert or in accordance with a common understanding, for the purpose of compelling their employer to agree to terms or conditions of employment or to aid other employees in compelling their employer to agree to terms or conditions of employment;	2 (1) "Strike" includes a cessation of work, or refusal to work, or *refusal to continue to work,* by employees in combination or in concert or in accordance with a common understanding for the purpose of compelling their employer to agree to conditions of employment of his employees:	57 (1) (h) "Strike" or "to go on strike" includes the cessation of work by a body of employees acting in combination or the concerted refusal or the refusal under a common understanding of a number of employees to work for an employer for the purpose of compelling their employer, or to aid other employees in compelling their employer, to accept terms or conditions of employment.		2 (1) (m) Same as Alberta, except: "a refusal under a common understanding"; "to *continue to* work for an employer"; "*done to compel*" instead of "for the purpose of compelling"; and "terms of employment" instead of "terms and conditions
2 (1) (q) "To strike" includes to cease work, or to refuse to work or to continue to work, in combination or in concert or in accordance with a common understanding, for the purpose of compelling the employer of the employees who so cease, or refuse, to agree to terms or conditions of employment to aid other employees in compelling their employer to agree to terms or conditions of employment.	2 (1) Same as Dominion Bill, except "to *refuse* to continue to work; "conditions of employment" instead of "terms or conditions"; and omits the last three words.	See above, 57 (1) (h).		See above.
2 (1) (r) "Trade union" or "union" means any organization of employees formed for the purpose of regulating relations between employers and employees;	2 (1) "Trade-union" means an international, national, or provincial, organization of employees, or a local branch chartered by and in good standing with such an organization;	57 (1) (i) Same as Dominion Bill, but omits "o union".	2 (10) "*Trade union*" *means a labour organization which is not a company dominated organization.*	2 (1) (n) "Trade union" means a *provincial, national or international employees' organization, or a local branch chartered by, and in good standing with, such an organization;*
	2 (1) "*Employees' organization*" *means an organization of employees, other than a trade-union, that has as its object, or one of its objects, the regulating of relations between an employer or employers and his or their employees;*		2 (8) "Labour organization means any organization of employees, *not necessarily employees of one employer, which has bargaining collectively among its purposes.*	2 (1) (i) "*Employee's organization*" *means an organization of employees formed to regulate relations between employers and employees;*

ONS—*Con.*

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
Same as Manitoba.	2 (d) "Association" includes a professional syndicate, a union of such syndicates, a group of employees or of employers, bona fide, having as object the regulation of relations between employers and employees *and the study, defence and development of the economic, social and moral interests of its members, with respect for law and authority;*	Same as Manitoba.	Same as Dominion Bill.	
Same as Manitoba.	2 (j) "Strike" means concerted cessation of work by a group of employees.	Same as Manitoba.	Same as Dominion Bill.	
See above.		See above.	Same as Dominion Bill.	
Same as Manitoba.	See above, "association."	Same as Manitoba.	Same as Dominion Bill.	2. "Trade union" shall *mean any lawful association, union or organization of employees, whether employed by one employer or by more than one employer which is formed for the purpose of advancing in a lawful manner the interest of such employees in respect of their employment.*
Same as Manitoba.		Same as Manitoba.		

DEFINITI

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
9 (5) Notwithstanding anything in this Act, no trade union, the administration, management or policy of which is, in the opinion of the Board, (a) influenced by an employer so that its fitness to represent employees for the purpose of collective bargaining is impaired; or (b) dominated by an employer; shall be certified as a bargaining agent of employees, nor shall an agreement entered into between such trade union and such employer be deemed to be a collective agreement for the purposes of this Act.	11 (5) Notwithstanding anything contained in this Act, no trade-union, the administration, management or policy of which is, in the opinion of the Board, dominated or influenced by an employer, and no bargaining representatives who are, in the opinion of the Board, dominated or influenced by an employer, so that their fitness to represent employees for the purpose of collective bargaining is impaired, shall be certified as the bargaining authority of the employees, nor shall an agreement entered into between such trade-union or representatives and such employer be deemed to be a collective agreement.		2 (4) "*Company-dominted organization*" *means any labour organization, the formation or administration of which any employer or employer's agent has dominated or interfered with or to which any employer or employer's agent has contributed financial or other support, except as permitted by this Act.* 5 (f) *The Board shall have power to make orders:— . . . requiring an employer to disestablish a company dominated organization.*	
2 (3) For the purposes of this Act, a "unit" means a group of employees and "appropriate for collective bargaining" with reference to a unit, means a unit that is appropriate for such purposes whether it be an employer unit, craft unit, technical unit, plant unit, or any other unit and whether or not the employees therein are employed by one or more employer. (sic)	2 (3) For the purposes of this Act, a "unit" means a group of employees and "appropriate for collective bargaining" with reference to a unit, means appropriate for such purposes, whether the unit be an employer unit, craft unit, professional unit, plant unit, or a subdivision of a plant unit, or any other unit, and whether or not the employees therein are employed by one or more employers.		5 (a) The Board shall have power to make orders: (a) *Determining whether the appropriate unit of employees for the purpose of bargaining collectively shall be an employer unit, craft unit, plant unit or a subdivision thereof or some other unit.*	
8. Where a group of employees of an employer belong to a craft or group exercising technical skills, by reason of which they are distinguishable from the employees as a whole and the majority of the group are members of one trade union pertaining to such craft or other skills, the trade union may apply to the Board subject to the provisions of section seven of this Act, and shall ve entitled to be cerfified as the bargaining agent of the employees in the group if the group is otherwise appropriate as a unit for collective bargaining.	10 (1) Where the majority of a group of employees of an employer who belong to a craft, by reason of which they are distinguishable from the employees as a whole, are separately organized into one trade-union, or are members of one trade-union, pertaining to the craft or profession, if the group is otherwise appropriate as a unit for collective bargaining. the trade-union may apply to the Board and shall be entitled to be certified as the bargaining agent of the employees in the group.			5 (4) *If in accordance with established trade union practice* the majority of a group of employees who belong to a *craft* by reason of which they are distinguishable from the employees as a whole, are separately organized into a trade union pertaining to the *craft such trade union may elect or appoint its officers or other persons as bargaining representatives on behalf of the employees belonging to that craft.*
	10 (2) The employees in a unit in respect of whom a trade union is entitled to be certified as bargaining agent under this section, shall, if the trade union so claims, be excluded from any other unit for collective bargaining and shall not be taken into account as members of any such other unit for any purpose of this Act.			5 (4) *Where any group claims and is entitled to the rights conferred by this subsection, the employees comprising (sic) the craft shall not be entitled to vote for any of the purposes of collective bargaining with that employer, except when the collective bargaining is in respect only of the craft to which they belong; nor shall they in any manner be taken into account in the computation of a majority in respect of any matter regarding which they are not entitled to vote.*

ONS—*Con.*

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
			9 (6) Notwithstanding anything contained in this Act, no trade union, the administration, management or policy of which is, in the opinion of the Board, dominated or influenced by an employer so that its fitness to represent employees for the purpose of collective bargaining is impaired, shall be certified as a bargaining agent of employees, nor shall an agreement entered into between such trade union and such employer be deemed to be a collective agreement.	
	6. *Every association desiring to be recognized for the purposes of this Act, as representing a group of employees . . . , shall apply by petition in writing to the Board and the latter, after inquiry, shall determine . . . what group of employees it shall represent.* 9. *The Board shall issue, to every recognized association, a certificate specifying the group which it is entitled to represent.*		Same as Dominion Bill.	
Same as Manitoba.		Same as Manitoba.	Same as Dominion Bill	
Same as Manitoba.		Same as Manitoba.		

RIGHT OF

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
3 (1) Every employee shall have the right to be a member of a trade union and to participate in the activities thereof.	3 (1) Every employee shall have the right to be a member of a trade union *or employees' organization in which he is eligible for membership* and to participate in the lawful activities thereof.	59. *It shall be lawful for employees to bargain collectively with their employer and to conduct such bargaining through a bargaining agent.*	3. *Employees shall have the right to organize in and to form, join or assist trade unions and to bargain collectively through representatives of their own choosing, and the representatives designated or selected for the purpose of bargaining collectively by the majority of employees in a unit appropriate for such purpose shall be the exclusive representatives of all employees in such unit for the purpose of bargaining collectively.*	4 (1) Same as Dominion Bill, except that it adds "*or employees' organization,*" and says "*lawful.*"
			19. *A trade union and the acts thereof shall not be deemed to be unlawful by reason only that one or more of its objects are in restraint of traed.*	
			20. *Any act done by two or more members of a trade union, if done in contemplation or furtherance of a trade dispute, shall not be actionable unless the act would be actionable if done without any agreement or combination.*	
			21. *A trade union shall not be made a party to any action in any court unless such trade union may be made a party irrespective of any of the provisions of this Act.*	
	47. Unless otherwise provided therein, no action may be brought under or by reason of any collective agreement, unless it may be brought irrespective of the provisions of this Act. *No trade-union nor any association of workmen or employees in the province, nor the trustees of any such trade-union or association in their representative capacity, shall be liable in damages for any wrongful act of commission or omission in connection with any strike, lockout, or trade or labour dispute, unless the members of such trade-union or association, or its council, committee, or other governing body, acting within the authority or jurisdiction given such council, committee, or other governing body by the rules, regulations, or directions of such trade-union or association, or the resolutions or directions of its members resident in the locality or a majority thereof.*		22. *A collective bargaining agreement shall not be the subject of any action in any court unless such collective bargaining agreement might be the subject of such action irrespective of any of the provisions of this Act.*	

ASSOCIATION

Ontario Act	**Quebec Act**	**New Brunswick Act**	**Nova Scotia Act**	**P E I Act**
Same as Manitoba.	3. Every employee shall have the right to be a member of *an association* and to participate in its lawful activities.	Same as Manitoba.	Same as Dominion Bill.	4. *It shall be lawful for employees to form themselves into a trade union and to join the same when formed.* 5. *It shall be lawful for employees to bargain collectively with their employer or employers and for members of a trade union to conduct such bargaining through the trade union and through the duly chosen officers of such trade union.*
Same as Saskatchewan (Rights of Labour Act, 1944, Section 2.)				
Same as Saskatchewan (Rights of Labour Act, section 3 (1).)				
Same as Saskatchewan, except "may be *so* made" and "of *any of* the provisions", and adds, "or of the Labour Relations Board Act", (Rights of Labour Act, section 3 (2).)				
Same as Saskatchewan except as just noted. (Rights of Labour Act, Section 3 (3).)				

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
	have authorized or have been a concurring party in such wrongful act. (Trade-unions Act, section 2.) *No such trade-union or association shall be enjoined, nor shall any officer, member, agent, or servant of such trade-union or association or any other person be enjoined, nor shall it or its funds or any such officer, member, agent, servant, or other person be made liable in damages for communicating to any workman, artisan, labourer, employee or person facts respecting employment or hiring by or with any employer, producer, or consumer or distributor of the products of labour or the purchase of such products, or for persuading or endeavouring to persuade by fair or reasonable argument, without unlawful threats, intimidation, or other unlawful acts, such last-named workman, artisan, labourer, employee, or person, at the expiration of any existing contract not to renew the same with or to refuse to become the employee or customer of any such employer, producer, consumer, or distributor of the products of labour.* (Trade-unions Act, section 3.) *No such trade-union or association, or its officer, member, agent, or servant, or other person, shall be enjoined or liable in damages. nor shall its funds be liable in damages, for publishing information with regard to a strike or lockout, or proposed or expected strike or lockout, or other labour grievance or trouble, or for warning workmen, artisans, labourers, or employees or other persons against seeking, or urging workmen, artisans, labourers, employees, or other persons not to seek employment in the locality affected by such strike, lockout, labour grievance or trouble, or from purchasing, buying, or consuming products produced or distributed by the employer of labour party to such strike, lockout, labour grievance or trouble, during its continuance.* (Trade-unions Act, section 4.)			
26. Notwithstanding anything contained in this Act, any employee may present his personal grievance to his employer at any time.				

ASSOCIATION—*Conc.*

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
			Same as Dominion Bill	

UNFAIR LABOUR

Dominion Bill	**British Columbia Act**	**Alberta Act**	**Saskatchewan Act**	**Manitoba Act**
4 (1) No employer or employers' organization, and no person acting on behalf of an employer or employers' organization, shall participate in or interfere with the formation or administration of a trade union, or contribute financial or other support to it: provided that an employer may, notwithstanding anything contained in this section, permit an employee or representative of a trade union to confer with him during working hours or to attend to the business of the organization during working hours without deduction of time so occupied in the computation of the time worked for the employer and without deduction in wages in respect of the time so occupied, or provide free transportation to representatives of a trade union for purposes of collective bargaining or permit a trade union the use of the employers' premises for the purposes of the trade union.	4 (1) Same as Dominion Bill, except that it adds: "*or employees' organization*";; says "*union or* organization"; and "*for* the time so occupied" and *leaves out* the rest.	63. Same as Dominion Bill, except that it says "business of the *trade union*," and *leaves out* the free transportation, etc.	8 (1) It shall be an unfair labour practice for any employer or employer's agent:— (b) To discriminate or interfere with the formation or administration of any labour organization or contribute financial or other support to it; provided that an employer shall not be prohibited from permitting the *bargaining committee or officers of a trade union representing his employees in any unit* to confer with him *for the purpose of bargaining collectively* or attending to the business of a *trade union* without deductions from wages or loss of time so occupied *or from agreeing with any trade union for the use of notice boards and of the employer's premises for the purposes of such trade union.* (d) *To refuse to permit any duly authorized representative of a trade union with which he has entered into a collective bargaining agreement to negotiate with him during working hours for the settlement of disputes and grievances of employees covered by the agreement, or to make any deductions from the wages of any such duly authorized representative of a trade union in respect of the time actually spent in negotiating for the settlement of such disputes and grievances.* (g) *To interfere in the selection of a trade union as a representative of employees for the purpose of bargaining collectively.*	19. No employer shall *dominate* or interfere with the formation or administration of a trade union or *employees' organization* or contribute financial or other support to it; but an employer may, notwithstanding the foregoing, permit an employee or representative of a trade union or *employees' organization* to confer with him during working hours or to attend to the business of the organization *or union* during working hours without deduction of time so occupied in the computation of the time worked for the employer and without deduction of wages in respect thereof.
4 (2) No employer and no person acting on behalf of an employer, shall (a) refuse to employ or to continue to employ any person, or otherwise discriminate against any person in regard to employment or any term or condition of employment because the person is a member of a trade union.	4 (2) (9) Same as Dominion Bill, except that it says "member *or officer*", and "*or employees' organization,*" and leaves out "otherwise."		(e) *To discriminate i regard to hiring or tenure of employment or any term or condition of employment . . . with a view to encouraging or discouraging membership in or activity in or for a labour organization or participation of any kind in a proceeding under this Act,* (with proviso for union security; below).	19 (2) No employer *or employer's organization,* and no person acting on behalf of same shall (a) refuse to *employ* any person because the person is a member of a trade union *or an employees' organization;*

PRACTICES

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
Same as Manitoba.	20. No employer, nor person acting for an employer or an association of employers, shall in any manner seek to dominate or hinder the formation or activities of any association of employees.	Same as Manitoba.	Same as Dominion Bill.	
Same as Manitoba.	21. No employer, nor person acting for an employer or an association of employers shall refuse to *employ* any person because such person is a *member or an officer of an association.*	Same as Manitoba.	Same as Dominion Bill.	

Dominion Bill	**British Columbia Act**	**Alberta Act**	**Saskatchewan Act**	**Manitoba Act**
		65. No employer shall interfere with, restrain or coerce any employee in the exercise of any right conferred by this Part.	(f) *To require as a condition of employment that any person shall abstain from joining or assisting or being active in any trade union or from exercising any right provided by this Act, except as premitted by this Act.*	
(b) impose any condition in a contract of employment seeking to restrain an employee from exercising his rights under this Act; or	4 (2) (b) Same as Dominion Bill.	64. No employer hereafter shall insert any *clause in any written contract* of employment or impose any condition in any *verbal* contract of employment *or continue an such clause or condition heretofore in effect where such clause or condition seeks to restrain any employee from exercising his rights under this Part, and any such clause or condition shall be of no effect.*	(a) *To interfere with, restrain or coerce any employee in the exercise of any right conferred by this Act.* (See also, (f), above).	19(2) (b) Same as Dominion Bill, except *"the* contract."
4 (3) No employer and no person acting on behalf of an employer shall seek *by intimidation, by threat of dismissal, or by any other kind of threat, or by the* imposition of a pecuniary or other penalty, or by any other means to compel an employee to refrain from becoming *or to cease to be* a member of a trade union.	4 (2) (c) Seek by intimidation, by dismissal, by threat of dismissal, or by any other kind of threat, or by the imposition of a penalty, or by a promise, or by any other means to compel or to induce an employee to refrain from becoming or continuing to be a member or officer or representative of a trade-union or employees organization,—	66 (1) Any person who by intimidation. *threat of loss of position or employment or by an actual loss of position or employment or by any other threat seeks to compel any person:—* (a) *to refrain from attending any meeting of employees held for the purpose oi discussing grievances or selecting a bargaining agent to carry on collective bargaining; or* (b) *to refrain from acting as representative to carry on collective bargaining; or* (c) *to refrain from engaging in any activities in support of a trade union or a bargaining agent or from making a complaint to a trade union or a bargaining agent or from giving evidence at any inquiry; shall, in any such case, be guilty of an offence and liable on summary conviction to a fine of not more than five hundred dollars and costs.*	8 (1) (e) To . . . use *coercion* or intimidation *of any kind with a view to encouraging or discouraging membership in or activity in or for a labour organization* (with proviso for union security; below). (h) *To maintain a system of industrial espionage or to employ or direct any person to spy upon a member or proceedings of a labour organization, or the offices thereof or the exercise by any employee of any right provided by this Act.* (i) *To threaten to shut down or move a plant or any part of a plant in the course of a labour dispute.* 1946 amendment puts burden of proof on *employer* in cases of alleged dismissal for union activity.	19 (2) (c) Same as Dominion Bill, except that omits the first "or"; says *"or by any other means whatsoever to compel an employee to abstain"*; and adds: *"or employees' organization, or from exercising his lawful rights."*
4 (4) Except as expressly provided, nothing in this Act shall be interpreted to affect the right of an employer to suspend, transfer, lay off or discharge an employee for proper and sufficient cause.	4 (2) Same as Dominion Bill, except that it omits "and sufficient."	67. Nothing in this Part shall *detract from or interfere with* the right of an employer to suspend, transfer, lay off or discharge employees for proper and sufficient cause.		19. but nothing in this Act shall be interpreted to affect, *otherwise than as expressly stated,* the right of an employer to suspend, transfer, lay off or discharge employees for *appropriate* and sufficient cause.
5. Except with the consent of the employer, no trade union, and no person acting on behalf of a trade union, shall attempt at the employer's place of employment during the working hours of an employee to persuade the employee to become or refrain from becoming or continuing to be a member of a trade union.	5 (1) Except with the consent of the employer, no trade-union *or employees' organization* and no person acting on behalf of a trade-union or *employees' organization* shall attempt at the employer's place of employment during working-hours to persuade an employee of the employer to join *or not to join* a trade-union or *employees'* organization.			20 (2) Except with the consent of the employer, no trade union *or employees' organization, and no person authorized by* the union *or employees' organization* to act on its behalf, shall attempt at the *employee's* place of employment during *his* working hours to persuade an employee to join the trade union *or employees' organization.*

PRACTICES—*Con.*

Ontario Act	**Quebec Act**	**New Brunswick Act**	**Nova Scotia Act**	**P. E I Act**
Same as Manitoba.		Same as Manitoba.	Same as Manitoba	6. Same as Alberta, except that it begins: "It shall be unlawful."
Same as Manitoba.	21. No employer, nor person acting for an employer or an association of employers, shall . . . seek *by intimidation, threat of dismissal or other threat, or by the imposition of a penalty or by any other means, to compel an employee to abstain from becoming or to cease being a member or an officer of an association.*	Same as Manitoba.	Same as Dominion Bill	7. Any employer, whether an individual person, a firm or a corporation which shall be intimidation, *threat of loss of position or employment, or by actual loss of position or employment, or by threatening or imposing any pecuniary penalty prevent or attempt to prevent, an employee from joining or belonging to a trade union shall be liable upon summary conviction to a fine not exceeding One Hundred Dollars for each such offence, and in default to thirty days' imprisonment, and in case of a corporation, to a fine not exceeding Five Hundred Dollars.*
Same as Manitoba.	21. This section shall not have the effect of preventing an employer from suspending, dismissing, discharging or transferring an employee for *good* and sufficient cause, proof *whereof shall devolve upon the said employer.*	Same as Manitoba.	4 (4) Same as Dominion Bill, but inserts "*change the status of,*" after "*lay-off.*"	Same as Alberta.
Same as Manitoba.	23. Except with the consent of the employer, no *person shall, in the name or on behalf of an association,* (a) *solicit an employee, during working hours, to join an association, or* (b) *convene employees for such purpose at their place of employment.*	Same as Manitoba.	5 (1) Except with the consent of an employer, no trade union and no person acting on behalf of a trade union shall attempt at the employer's place of employment to persuade an employee of the employer to join a trade union.	

Dominion Bill	**British Columbia Act**	**Alberta Act**	**Saskatchewan Act**	**Manitoba Act**
	5 (2) No trade-union or employees' organization and no person acting on behalf of a trade union or employees' organization and no employee shall support, encourage, condone, or engage in any activity that is intended to restrict or limit production. 5 (3) No act or thing required by the provisions of a collective agreement for the safety or health of employees shall be deemed to be an activity intended to restrict production.			20 (3) No trade union or *employees' organization* and no person acting on its behalf shall support, encourage, condone or engage in *a "slowdown"* or other activity designed to restrict or limit production; *but this provision shall not be interpreted to limit a trade union's legal right to strike and a thing required by a provision in* a collective *agreement for the safety or health of the* employees shall be deemed not to be a "*slowdown*" or designed to restrict or limit production.
	6. No person shall use coercion or intimidation of any kind *that would have the effect of* compelling *or inducing* any person to become or refrain from becoming, or *to continue* or cease to be, a member of a trade-union or *employees' organization.*	66 (3) No *employee* or any *person* acting on behalf of a *trade union* shall use coercion or intimidation of any kind with a view to *encouraging or discouraging membership in or activity in or for a trade union.*		20 (1) No person shall, with a view to compelling or influencing a person to *join* a trade union or *employees' organization* use coercion or intimidation of any kind.
6 (1) Nothing in this Act prohibits the parties from inserting in the collective agreement a provision requiring, as a condition of employment, membership in a specified trade union, or granting a preference of employment to members of a specified trade union.	7. Nothing in this Act shall be construed to preclude the parties to a collective agreement from inserting in the collective agreement a provision requiring, as a condition of employment, membership in a specified trade-union or employees' organization, or granting a preference of employment to members of a specified trade-union or employees' organization, or to preclude the carrying-out of such provisions.	66 (2) Nothing contained in *sub-section* (1) (*Note that this is the set of provisions above beginning: "any person who by intimidation, threat," etc.) shall prevent a trade union from maintaining an existing agreement or entering into a new agreement with an employer or organization of employers, whereby all the employees, or any unit or classification of employees of the employer or organization of employers are required to be members of a specified trade union.*	8 (2) *It shall be an unfair labour practice for any employee or any person acting on behalf of a labour organization.—* (a) *to use coercion or intimidation of any kind with a view to encouragin or discouraging membership in or activity in or for a labour organization; provided that nothing in this Act shall preclude a person acting on behalf of a trade union from attempting to persuade an employer to make an agreement with that trade union to require as a condition of employment membership or maintenance of membership in such trade union or the selection of employees by or with the advice of a trade union or any other condition in regard to employment, if such trade union has been designated or selected by a majority of employees in any such unit as their representative for the purpose of bargaining collectively.*	*but this subsection shall not be construed to prohibit the inclusion of any provision in a collective agreement.*

PRACTICES—*Con.*

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
Same as Manitoba.	25. *No association or person acting on behalf of an association shall order, encourage or support a slackening of work designed to limit production.*	Same as Manitoba.	5 (2) No trade union and no person acting on behalf of a trade union and no employee shall support, encourage, condone or engage in any activity that is intended to restrict or limit production.	
		Same as Manitoba.	4 (5) Nothing in this Act shall be interpreted as forbidding an employer to explain his side of a labour dispute or labour organizing activity to his employees directly, through a meeting, by mail, or bulletin boards. If negotiations break down or collective bargaining ceases to be bargaining, he may so explain his side of the dispute.	
Same as Manitoba.		Same as Manitoba.	4 (3) ....No *other person* shall seek by intimidation or coercion to compel an employee to become or refrain from becoming or to cease to be a member of a trade union. ("Other person" means other than an employer or person acting on his behalf.)	
Same as Manitoba.				

UNFAIR LABOUR

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
			8 (1) (e) *provided that nothing in this Act shall preclude an employer from making an agreement with a trade union, etc., as above.*	
6 (2) No provision in a collective agreement requiring an employer to discharge an employee because such employee is or continues to be a member of, or engages in activities on behalf of a union other than a specified trade union, shall be valid.				

UNION

			25 (1) Upon the request of a trade union representing a majority of employees in any appropriate bargaining unit, the following clause shall be included in any collective bargaining agreement entered into between such trade union and the employer concerned, and, whether or not any collective bargaining agreement is for the time being in force, the said clause shall be effective and its terms shall be carried out by such employer with respect to such employees on and after the date of such trade union's request until such time as the employer is no longer required by or pursuant to this Act to bargain collectively with such trade union: "Every employee who is now or hereafter becomes a member of the union shall maintain his membership in the union as a condition of his employment, and every new employee whose employ0ment commences hereafter shall, within thirty days after the commencement of his employment, apply for and maintain membership in the union as a condition of his employment:" and the expression "the union" in the said clause shall mean the trade union making such request.	

PRACTICES—*Conc.*

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
			Sane as Dominion Bill.	

SECURITY

CHECK -

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
8 (1) *Every employer shall honour a written assignment of wages to a trade-union or to an employees' organization.* (2) *An assignment pursuant to subsection* (1) *shall be substantially in the following forms—* *To (name of employer):* *Until this authority is revoked by me in writing, I hereby authorize you to deduct from my wages and pay to (name of employees' organization or number and name of local union) fees in the amounts following—*(1) *Initiation fees in the amount of* $......... (2) *Dues of* $.....*per*..... (3) *Unless the assignment is revoked in writing delivered to the employer, the employer shall remit the dues deducted to the union or organization named in the assignment at least once each month, together with a written statement of the names of the employees for whom the deductions were made and the amount of each deduction.* (4) *If an assignment is revoked, the employer shall give a copy of the revocation to the assignee.* (5) *Notwithstanding any provisions contained in subsections* (1), (2), (3), *there shall be no financial responsibility on the part of an employer for fees or dues of an employee unless there are sufficient unpaid wages of that employee in the employer's hands.*	83. *Any employee may by order in writing signed by him, request his employer to apply any part of the moneys due to the employee to the payment of any amount payable by him to any other person for union dues, and the employer shall from the moneys so due, make the payments as requested by the writer, and such order shall be effective only for the amount specified therein, and shall continue in force until revoked by the employee.*	23. *Upon the request in writing of any employee, and upon the request of a trade union representing the majority of employees, in any bargaining unit of his employees, the employer shall deduct and pay in periodic payments out of the wages due to such employee, to the person designated by the trade union to receive the same, the union dues of such employee until such employee has withdrawn in writing such request, and the employer shall furnish to such trade union the names of the employees who have given or withdrawn such authority. Failure to make payments and furnish information required by this section shall be an unfair labour practice.*		

CERTIFI

		59 (2) *The employees of an employer or specified unit or classification of employees appropriate for collective bargaining may elect a bargaining agent by a majority vote of the employees entitled to vote.*		5 (1) *The employees of an employer may elect bargaining representatives by a majority vote of the employees affected.*

OFF

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
			67. (1) *Every employer shall honour a written assignment of wages to a trade union, provided,* (a) *the officers of a trade union thereunto duly authorized by its members make application to the Minister for the taking of a vote to ascertain the wishes of the employees of the employer in respect to such assignment; and* (b) *upon a vote taken by ballot at ties and under conditions fixed by the Minister, a majority of the employees of the employer vote in favour of the making of such assignment.* (2) . . . *An assignment pursuant to subsection* (1) *shall be substantially in the following form:—* *To* (*name of employer*) (*the rest is the same as the British Columbia Act, even mentioning the employees' organization;* otherwise not mentioned in the Nova Scotia Act; except for: the *omission* of the final subsection "Notwithstanding," etc.)	12. *In any industry in which by statute of the Province of Prince Edward Island or by arrangement between employer and employees deductions are made from the wages of employees for benefit societies, hospital charges, or the like, deductions shall be made by the employer from the wages of employees but only for periodical payments to a trade union of employees.* (a) *If the officers of such trade union thereunto duly authorized by its members make application to the Provincial Secretary for the taking of a vote to ascertain the wishes of the employees of such industry in respect of such deductions; and* (b) *If, upon a vote being taken by ballot at times and under conditions fixed by the Provincial Secretary, a majority of the employees of such industry vote in favour of the making of such deductions; and* (c) *If the individual employee being a member of such trade union makes to the employer a signed written request that such deductions be made from the wages due to him therein indicating the name of the person to whom such deductions shall be paid.* 13. *In every industry in which deductions are made by the employer from the wages of the employee, whether by statutory provision as aforesaid or by arrangement between employer and employee, the employer shall furnish to the Provincial Secretary when requested by him so to do before the first day of February in each year a statement showing the amounts deducted. Such statement shall be in such form and contain such particulars and such further information as the Provincial Secretary may from time to time require. Every employer who fails to comply with the provisions of this section shall be liable on summary conviction to penalty not exceeding On Hundred Dollars. (Thi penalty is for failing to make returns to the Provincial Secretary.)*

CATION

Same as Manitoba.		Same as Manitoba.		

Dominion Bill	**British Columbia Act**	**Alberta Act**	**Saskatchewan Act**	**Manitoba Act**
		3. *The employees entitled to vote at a vote taken under the provisions of this section or of subsection (7) of section 80 shall be any employee who has been duly admitted to membership in a trade union who has continued such membership for a period of not less than three months and who retains such membership and is in good standing according to the constitution and by-laws of the trade union, and also any employee who has been in the service of the employer for a period of at least three months prior to the taking of the vote.*		(2) *If the majority of the employees affected are members of one trade union, that trade union may elect or appoint its officers or other persons as bargaining representatives on behalf of all the employees affected; for the purpose of this section an employee shall be deemed to be a member of the trade union if he has in writing requested the trade union to elect or appoint bargaining representatives on his behalf.*
7 (1) A trade union claiming to have as members in good standing a majority of employees of one or more employers in a unit that is appropriate for collective bargaining may, subject to the rules of the Board and in accordance with this section, make application to the Board to be certified as bargaining agent of the employees in the unit.	9 (1) A trade-union claiming to have as members in good standing a majority of employees *in a unit that is appropriate for collective bargain-claiming, or bargaining representatives claiming to have been elected by a majority of the employees of an employer* in a unit that is appropriate for collective bargaining, may apply to the Board to be certified as the *bargaining authority* for the unit in any of the following cases:—	(4) *The bargaining agent claiming to have been selected under the provisions of this section may,—*		6. *When bargaining representatives have been elected or appointed, application may be made to the Board by or on behalf of such representatives for their certification as the bargaining representatives of the employees affected.*
7 (2) Where no collective agreement is in force and no bargaining agent has been certified under this Act for the unit, the application may be made at any time.	(a) where no collective agreement *is in force* and no *bargaining authority* has been certified for the unit:	(a) where no collective agreement binding on or entered into on behalf of *the* employees *or of a specified unit or classification of employees, as the case may,* is in force, and no bargaining agent has been certified *under this section* at any time;		
(3) Where no collective agreement is in force but a bargaining agent has been certified under this Act for the unit, the application may be made after the expiry of twelve months from the date of certification of the bargaining agent, but not before, except with the consent of the Board.	(b) where no collective agreement *is in force* and where either:— (i) *six* months have elapsed since the date of certification of a *bargaining authority* for the unit; or (ii) *the Board has consented to an application before the expiry of said period of six months; and*	(b) where no collective agreement binding on or entered into on behalf *of the* employees *or of a specified unit or classification of employees, as the case may be,* is in force, but a bargaining agent has been certified under this section, after the expiry of *ten* months from the date of certification of the bargaining agent;		
(4) Where a collective agreement is in force, the application may be made at any time after the expiry of ten months of the term of the collective agreement, but not before, except with the consent of the Board.	(c) where a collective agreement *is in* force, and where ten months of the term of *a* collective agreement have expired.	(c) where a collective agreement binding on or entered into on behalf of *the* employees *or of a specified unit or classification of employees, as the case may be,* is in force, at any time after, but not before, the expiry of ten months of the term of the collective agreement; make application to the Board to be certified as *the* bargaining agent of the employees *of* the employer *or a unit of employees, as the case may be.*	24. (3) Any trade union claiming to represent a majority of employees in the appropriate unit of employees or any part thereof to which any collective bargaining agreement applies may, not less than thirty days nor more than sixty days before the expiry date of such agreement, apply to the board for an order determining it to be the trade union representing a majority of employees in the appropriate unit of	9. *At any time after the expiry of ten months of the term of a collective agreement, whether entered into before or after the effective date of this Act, the employees may elect new bargaining representatives in the manner provided in section five and application may be made to the Board by or on behalf of such bargaining representatives for their certification. Upon receipt of such application the Board shall deal with the same as in the case of*

CATION—*Con.*

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
Same as Manitoba.		Same as Manitoba.		
Same as Manitoba.	6. *Every association desiring to be recognized for the purposes of this Act, as representing a group of employees . . . , shall apply by petition in writing to the Board, and the latter, after inquiry, shall determine whether such association is entitled to be so recognized and what group of employees it shall represent.*		Same as Dominion Bill.	
			Same as Dominion Bill.	
			Same as Dominion Bill.	
Same as Manitoba.	16. *From the sixtieth to the thirtieth day prior to the expiration of a collective agreement or the date of its renewal, any association may, if there is occasion for so doing, present a petition to the Board in the form prescribed in section 6, to be recognized, in the place and stead of a signatory association, as representative . . . of the employees or of a more appropriate group, in the circumstances, for the purpose of negotiating a collective agreement.*	Same as Manitoba.	Same as Dominion Bill.	

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Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
			employees to which the agreement applies, or in any part thereof, and if the board makes such order the employer shall forthwith bargain collectively with such trade union, and the former agreement shall be of no force or effect in so far as it applies to any unit of employees in which such trade union has been determined as representing a majority of employees.	*an initial application for certification under the Act.*
	9. (2) A trade-union claiming to have as members in good standing a majority of employees in a unit that is appropriate for collective bargaining, and the employees in which are employed by two or more employers, may make application under this section to be certified as bargaining agent for the unit.			5 (3) *Where more than one employer and their employees desire to negotiate a collective agreement, the employees of such employers may elect bargaining representatives by a majority vote of the employees affected by each employer, or, if the majority of the employees affected of each employer are members of one trade union that trade union may elect or appoint its officers or other persons as bargaining representatives on behalf of all the employees affected.*
7. (5) Two or more trade unions claiming to have as members in good standing of the said unions a majority of employees in a unit that is appropriate for collective bargaining, may join in an application under this section and the provisions of this Act relating to an application by one union, and all matters or things arising therefrom, shall apply in respect of the said application and the said unions as if it were an application by one union.	(3) Two or more trade-unions claiming to have as members in good standing *in* the said unions a majority of employees *in a unit that is appropriate for collective bargaining* (the rest same as Dominion Bill).			5 (5) *Two or more trade unions may, by agreement join in electing bargaining representatives on terms consistent with this Act.*
9 (1) Where a trade union makes application for certification under this Act as bargaining agent of employees in a unit, the Board shall determine whether the unit in respect of which the application is made is appropriate for collective bargaining and the Board may, before certification, if it deems it appropriate, include additional employees in, or exclude employees from, the unit.	11 (1) Where a trade-union or bargaining representatives apply for certification as the bargaining authority for a unit, the Board shall determine whether the unit is appropriate for collective bargaining, and the Board may, before certification, include additional employees in, or exclude employees from, the unit.	59 (5) Upon receipt of an application for certification of a bargaining agent *the Minister shall refer it to the Board for inquiry and report upon the following matters,—* (b) *whether, in the case of a unit or classification of employees, the unit or classification is in all the circumstances appropriate for collective bargaining;*	See above.	7. *Upon such application the Board shall by an examination of the records, by a vote or otherwise, satisfy itself that an election or appointment of bargaining representatives was regularly and properly made, and in the case of a trade union, that the trade union acted with the authority of the majority of the employees affected as prescribed by subsection two of section five, and that the unit of employees concerned is one which is appropriate for collective bargaining; and if the Board is not so satisfied, it shall reject the application.*
9 (2) When, pursuant to an application for certification under this Act by a trade union, the Board has determined that a	11 (2) Same as Dominion Bill, except "*or by bargaining representatives*".	59 (9) *If the Board reports to the Minister that it is satisfied,—* (a) *that the employees or the specified unit or classi-*	5 *The Board shall have power to make orders:—* (b) *Determining what trade union, if any, represents a*	

CATION—*Con.*

Ontario Act	**Quebec Act**	**New Brunswick Act**	**Nova Scotia Act**	**P E I Act**
	If any such association has been so recognized by the Board, the collective agree- shall be void, for the group represented by it, at the renewal date following the date of the petition presented to the Board, notwithstanding failure by either party to give notice of non-renewal.			
Same as Manitoba.		Same as Dominion Bill.	See above: "*one or more employers*".	
Same as Manitoba.	4. Several associations of employees may join to make up such majority and appoint representatives for purposes of collective negotiation, upon such conditions, not inconsistent with this Act, as they may deem expedient.	Same as Manitoba.	Same as Dominion Bill.	
Same as Manitoba.		Same as Manitoba.	Same as Dominion Bill.	
			Same as Dominion Bill.	

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Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
unit of employees is appropriate for collective bargaining (a) if the Board is satisfied that the majority of the employees in the unit are members in good standing of the trade union; or (b) if, as a result of a vote of the employees in the unit, the Board is satisfied that a majority of them have selected the trade union to be a bargaining agent on their behalf,		*fication of employees is appropriate for collective bargaining;* (b) *that the applicant is a proper bargaining agent; and* (c) *that a majority of the employees or of a specified unit or classification of employees, as the case may be, has selected the applicant to be a bargaining agent on its behalf;*	*majority of employees in an appropriate unit of employees.*	
	or (c) if, as a result of a vote of the employees in the unit, the Board is satisfied that a majority of them have voted for *bargaining representatives to be the bargaining authority on their behalf,*—			
The Board may certify the trade union as the bargaining agent of the employees in the unit.	the Board shall certify the *applicants* as the *bargaining authority* of the employees in the unit; but if the Board is not so satisfied, it shall refuse the application.	the *Minister* shall certify the *Applicant* to be a bargaining agent on their behalf but if the *Board* reports that it is is not satisfied the application shall be refused.		
9 (3) Where an application for certification under this Act is made by a trade union claiming to have as members in good standing a majority in a unit that is appropriate for collective bargaining, the employees in which are employed by two or more employers, the Board shall not certify the trade union as the bargaining agent of the employees in the unit unless	(3) Where an application for certification is made by a *bargaining authority* for a unit in which the employees are employed by two or more employers, the Board shall not certify the *bargaining authority* unless:—			
(a) all employers of the said employees consent thereto; and (b) the Board is satisfied that the trade union might be certified by it under this section as the bargaining agent of the employees in the unit of each such employer if separate applications for such purpose were made by the trade union.	(a) all the employers consent thereto; and (b) the *bargaining authority* would be entitled to be certified for the employees of each employer if separate applications were made in respect of each employer.			
(4) The Board shall, for the purposes of determining whether the majority of the employees in a unit are members in good standing of a trade union or whether a majority of them have selected a trade union to be their bargaining agent, make or cause to be made such examination of records or other inquiries as it deems necessary, including the holding of such	(4) The Board shall make, or cause to be made, such examination of records and other inquiries as it deems necessary, including the holding of hearings or the taking of votes, to determine the merits of any application for certification, and the Board may prescribe the nature of the evidence that the applicant shall furnish with or in support of the application, and	59 (7) The Board shall, for the purposes of this section, make or cause to be made such examinations of records or other inquiries as it deems necessary including the holding of such hearings or the taking of such votes as it deems expedient to determine the merits of any application for certification,		See above.

CATION—*Con.*

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
			Same as Dominion Bill.	
			Same as Dominion Bill.	
Same as Manitoba.	7. *The Board shall assure itself of the representative character of the association and of its right to be recognized and, for such purpose, shall examine its books and records.*	Same as Manitoba.	Same as Dominion Bill.	

Dominion Bill	**British Columbia Act**	**Alberta Act**	**Saskatchewan Act**	**Manitoba Act**
hearings or the taking of such votes as it deems expedient, and the Board may prescribe the nature of the evidence to be furnished to the Board.	the manner in which the application shall be made.			
		59 (7) . . .*Any vote taken pursuant to this section shall be by secret ballot and the Board may give directions as to the manner of taking the vote and the procedure to be followed during, before and after the taking of such vote, and if it considers it expedient to do so, conduct or supervise such vote on the premises of the employer, and the employer shall place a suitable portion of the premises at the disposal of the Board for that purpose.* (6) The Board may prescribe the nature of the evidence that the applicant shall furnish the Board with, or in support of, the application and the manner in which th application shall be made *and the Board shall complete its inquiries and report to the Minister within twenty-one days after the matter has been referred to it.* (8) *Where a vote for the election of a bargaining agent is taken pursuant to subsection* (7) *in any plant or industry where the employees work in two or three continuous shifts, arrangements shall be made for the taking of a vote during each of the said shifts if that is necessary in order to give all the employees an opportunity of voting.*	6. (1) In determining what trade union, if any, represents a majority of employees in an appropriate unit of employees, in addition to the exercise of any powers conferred upon it by section 14, the board may, in its discretion subject to subsection (2), direct a vote to be taken by secret ballot of all employees eligible to vote to determine the question. (2) The board shall direct a vote to be taken by secret ballot of all employees eligible to vote, upon the application of any trade union which twenty-five per cent or more of the employees in any appropriate unit have, within six months preceding the application, indicated as their choice of representative for the purpose of bargaining collectively, either by membership in such trade union or by written authority, but the board may, in its discretion, refuse to direct such vote if satisfied that another trade union represents a clear majority of the employees in such appropriate unit or if, within six months preceding the application, the board has, upon application of the same trade union, directed a vote of employees in the same appropriate unit.	
	11 (6) *If the Board is not satisfied that a bargaining authority is entitled to be certified under this section, it shall reject the application, and may designate the length of time, not exceeding ninety days, that must elapse before a new application by the same applicant will be considered.*			

CATION—*Con.*

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
	8. *The Board may order a vote by secret ballot of any specified group of employees if it is of the opinion that constraint has been used to prevent a number of the said employees from joining an association or to force them to join the same, or if it appears that the said employees are members of more than one association in sufficient numbers to affect the decision. Every employer shall be obliged to facilitate the holding of the vote and every employee in the group specified by the Board must vote, unless he has a legitimate excuse.*			
			9 (5) The Board in determining the appropriate unit shall have regard to the community of interest among the employees in the proposed unit in such matters as work location, hours of work, working conditions and methods of remuneration.	
			9 (7) Same as British Columbia, except that it says "trade union", and *leaves out* "not exceeding ninety days".	

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Dominion Bill	**British Columbia Act**	**Alberta Act**	**Saskatchewan Act**	**Manitoba Act**
10. Where a trade union is certified under this Act as the bargaining agent of the employees in a unit,	12. Where a *bargaining authority* is certified *for a unit:—*	(10) Where a bargaining agent is *certified under this section:—*	See above.	
(a) The trade union shall immediately replace any other bargaining agent of employees in the unit and shall have exclusive authority to bargain collectively on behalf of employees in the unit and to bind them by a collective agreement until the certification of the trade union in respect of employees in the unit is revoked,	(a) that *bargaining authority* shall immediately replace any other *bargaining authority for the unit,* and shall have exclusive authority to bargain collectively on behalf of the unit and to bind *it* by a collective agreement *until the certification is revoked.*	(a) the *bargaining agent* shall immediately replace any other bargaining agent *of employees* and shall have exclusive authority to bargain collectively on behalf *of the employees* and to bind them *by a collective agreement.*		
(b) If another trade union had previously been certified as bargaining agent in respect of employees in the unit, the certification of the last mentioned trade union shall be dee trade union shall be deemed to be revoked in respect of such employees, and	(b) if another *bargaining authority* had previously been certified *for the unit,* the certification of the last-mentioned *bargaining authority* shall be deemed to be revoked in respect of such employees; and	(b) if another *bargaining agent* had previously been certified as *bargaining agent* in respect *of the employees,* the certification of the last mentioned *bargaining agent* shall be deemed to be revoked in respect of such employees; and		
(c) if, at the time of certification, a collective agreement binding on or entered into on behalf of employees in the unit is in force, the trade union shall be substituted as a party to the agreement in place of the bargaining agent that is a party to the agreement on behalf of employees in the unit, and may, notwithstanding anything contained in the agreement, upon two months' notice to the employer, terminate the agreement in so far as it applies to those employees.	(c) if, at the time of certification, a collective agreement *binding on the unit* is in force, *that agreement shall remain in force, but any rights and obligations that were thereby conferred or imposed upon the bargaining authority whose certification has been revoked shall cease so far as that bargaining authority is concerned, but shall be conferred or imposed on the new bargaining authority.*	(c) Same as Dominion Bill, except that it says "*bargaining agent*", and "on behalf of *the employees*", instead of "employees in the unit".		9. *If on such application* (i.e., at the expiry of ten months of an existing collective agreement) *the Board certifies new bargaining representatives they shall be substituted for the previous bargaining representatives of the employees affected as a party to the agreement in question, and as such may give notice of the termination thereof, as provided for in the agreement or under this Act.*

Dominion Bill	**British Columbia Act**	**Alberta Act**	**Manitoba Act** **Ontario Act** **New Brunswick Act**	**Saskatchewan Act**
			4 (3) *Where bargaining representatives have been certified under section eight, the bargaining representatives or the employees' employer may, in accordance with the procedure hereinafter set out, enter into negotiations with a view to the completion of a collective agreement between the employer concerned on the one hand and the trade union or employees' organization on the other hand.*	

CATION—*Con.*

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
			Same as Dominion Bill.	
			Same as Dominion Bill.	
			Same as Dominion Bill.	
Same as Manitoba.		Same as Manitoba.	Same as Dominion Bill.	

Quebec Act	Nova Scotia Act	P E I Act		
4. *Every employer shall be bound to recognize as the collective representative of his employees the representatives of any association comprising the absolute majority of his said employees and to negotiate with them, in good faith, a collective labour agreement.* 5. The employer shall incur the obligation contemplated in the preceding section, as the board may decide, either				

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Dominion Bill	**British Columbia Act**	**Alberta Act**	**Manitoba Act** **Ontario Act** **New Brunswick Act**	**Saskatchewan Act**
			8. (2) *When bargaining representatives have been certified by the Board, the Board shall notify the applicants and the employer concerned of the certification.*	

COLLECTIVE

Dominion Bill	**British Columbia Act**	**Alberta Act**	**Saskatchewan Act**	**Manitoba Act**
12. Where the Board has under this Act certified a trade union as a bargaining agent of employees in a unit and no collective agreement with their employer binding on or entered into on behalf of employees in the unit, is in force, (a) the bargaining agent may, on behalf of the employees in the unit, by notice, require their employer to commence collective bargaining, or	13. Where the Board has certified a *bargaining authority* for employees in a unit and no collective agreement *is in force:—* (a) the *bargaining authority* may by notice require *the* employer to commence collective bargaining; or	60. (1) *The bargaining agent representing the employees or the unit or classification of employees duly certified in accordance with the provisions of section* 59 *may serve upon the employer or employers a notice of a meeting to be held for the purpose of collective bargaining.* (2) *The notice shall be served upon the employer or employers at least three clear days before the time of the meeting and the employer or employers or his or their duly accredited representatives shall attend such meeting for the purpose of bargaining with the representatives of the employees.* (3) *Such service may be effected by personal service or by mailing the notice by registered post and the date of mailing the notice shall be deemed to be the date of service.*		10. (1) *When bargaining representatives have been certified under this Act they may give the employer concerned, or the employer concerned may give the bargaining representatives, ten clear days' notice requiring that he or they, as the case may be, enter into negotiations with a view to the completion of a collective agreement.* (2) *The parties shall negotiate in good faith with one another and make every reasonable effort to conclude a collective agreement.* (3) *At the request of the bargaining representatives they may be accompanied during the negotiations by officers or agents of the trade union or employees' organization concerned.*
(b) the employer or an employers' organization representing the employer may, by notice, require the bargaining agent to commence collective bargaining, with a view to the conclusion of a collective agreement.	(b) the employer or an employers' organization representing the employer may by notice require the *bargaining authority* to commence collective bargaining.			

CATION—*Conc.*

Quebec Act	Nova Scotia Act	P E I Act		
towards the aggregate of his employees or towards each group of the said employees which the Board declares is to form a separate group for the purposes of this Act. If the employer is a member of an association recognized for such purpose by the Board, such obligation shall devolve exclusively upon the said association in favour of all the employees of its members or in favour of each group of such employees which the Board may declare is to form a separate group for the purposes of this Act.				
9. The Board shall issue to every recognized association, a certificate specifying the group which it is entitled to represent.				

BARGAINING

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
Same as Manitoba.	11. *If an association recognized by the Board wishes to avail itself of the recognition, it shall give to the employer or to the association of employers or of employees, as the case may be, at least eight days' written notice of the day and hour when and of the place where its representatives will be ready to meet the other party or his representatives for the purpose of making a collective labour agreement.*	Same as Manitoba.	Same as Dominion Bill.	
			Same as Dominion Bill.	

Dominion Bill	**British Columbia Act**	**Alberta Act**	**Saskatchewan Act**	**Manitoba Act**
13. Either party to a collective agreement, whether entered into before or after the commencement of this Act, may, within the period of two months next preceding the date of expiry of the term of, or preceding termination of the agreement, by notice, require the other party to the agreement to commence collective bargaining with a view to the renewal or revision of the agreement or conclusion of a new collective agreement.	14. Either party to a collective agreement, whether entered into before or after the commencement of this Act, may, within the period of two months *immediately* preceding the date of expiry *of the agreement*, by notice to require the other party to the agreement to commence collective bargaining.		24 (2) Either party to a collective bargaining agreement may, not less than thirty days nor more than sixty days before the expiry date of such agreement, give notice in writing to the other party to terminate such agreement or to negotiate a revision thereof, and thereupon, subject to subsection (3), the parties shall forthwith bargain collectively with a view to the renewal or revision of such agreement or the conclusion of a new agreement.	16. (1) *Either party to a collective agreement may, on ten clear days' notice, require the other party to enter into negotiations fo the renewal of the agreement within the period of two months prior to the expiry date, and both parties shall thereupon enter into such negotiations in good faith and make every reasonable effort to secure such a renewal.* (2) Where either party to a collective agreement has required the other renewal of the agreement as in the pursuant to subsection one, to enter into negotiations for the renewal of the agreement, sections eleven, twelve, thirteen and fourteen shall apply to such negotiations for the case of negotiations for a collective
14. Where notice to commence collective bargaining has been given under section twelve of this Act. (a) the certified bargaining agent and the employer, or an employers' organization representing the employer shall, without delay, but in any case within twenty clear days after the notice was given or such further time as the parties may agree, meet and commence or cause authorized representatives on their behalf to meet and commence to bargain collectively with one another and shall make every reasonable effort to conclude a collective agreement; and	15. Where notice to commence collective bargaining has been given under section thirteen of this Act:— (a) the certified *bargaining authority* and the employer, or an employers' organization representing the employer, shall, within ten days after the notice was given *commence to* bargain collectively, and shall make every reasonable effort to conclude a collective agreement; and			
(b) the employer shall not, without consent by or on behalf of the employees affected, decrease rates of wages or alter any other term or condition of employment of employees in the unit for which the bargaining agent is certified until a collective agreement has been concluded or until a Conciliation Board appointed to endeavour to bring about agreement has reported to the Minister and fourteen days have elapsed after the report has been received by the Minister, whichever is earlier, or until the Minister has advised the employer that he has decided not to appoint a Conciliation Board.	(b) The employer shall not, *except in the ordinary course of operation, without consent by the certified bargaining authority, increase or* decrease rates or wages or alter *any term or condition of employment* until a collective agreement has been concluded, or until a Conciliation Board *has reported* to the Minister, and *until the question of the acceptance or rejection of the report of the Board has been submitted to a separate vote of the employers and the employees concerned respectively, and fourteen days have elapsed after the result of the vote has been notified to the Minister; and if the vote of both the employers and of the employees is in favour of acceptance of the report, no employer shall cause a lockout and no employees shall go on strike.* See also below.	81 (5) *Where any dispute* arises, no empolyer shall make effective a proposed change in wages *or hours or conditions* of employment without the consent *of the employees nor shall the employer declare or cause a lock-out, nor shall employees go on strike prior to an application for the appointment of a Conciliation Commissioner under section* 68 *or prior to an application to the Minister for intervention pursuant to subsection* (6) *of section* 60, *as the case may be.*		21 (4) Where a dispute has arisen by reason of a change in the existing terms of employment proposed by the employer, the employer shall not, without the consent of the employees affected, make such change effective until a period of two months has elapsed from the date when the employer notified the employees of such proposed change.

BARGAINING—*Con.*

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
Same as Manitoba.		Same as Manitoba.	Same as Dominion Bill.	
	No association that has entered into a collective agreement, and no group of . . . employees who are members of an association that has entered into any such agreement, shall take steps to affiliate with another association of to become a member thereof, except during the sixty days preceding the date of the expiration or renewal of the agreement.		Same as Dominion Bill.	
Same as Manitoba.		Same as Manitoba.	Same as Dominion Bill.	

Dominion Bill	**British Columbia Act**	**Alberta Act**	**Saskatchewan Act**	**Manitoba Act**
15. Where a party to a collective agreement has given notice under section thirteen of this Act to the other party to the agreement	16. Same as Dominion Bill, except "section fourteen".			
(a) The parties shall, without delay, but in any case within twenty clear days after the notice was given or such further time as the parties may agree upon, meet and commence or cause authorized representatives on their behalf to meet and commence to bargain collectively and make every reasonable effort to conclude a renewal or revision of the agreement or a new collective agreement; and	(a) The parties shall, within ten days after the notice was given, commence to bargain collectively and make every reasonable effort to conclude a renewal or revision of the agreement or a new collective agreement; and			See above.
(b) If a renewal or revision of the agreement or a new collective agreement has not been concluded before expiry of the term of, or termination of the agreement, the employer shall not, without consent by or on behalf of the employees affected, decrease rates of wages, or alter any other term or condition of employment in effect immediately prior to such expiry or termination provided for in the agreement, until a renewal or revision of the agreement or a new collective agreement has been concluded or a Conciliation Board, appointed to endeavour to bring about agreement, has reported to the Minister and fourteen days have elapsed after the report has been recieved by the Minister, whichever is earlier, or until the Minister has advised the employer that he has decided not to appoint a Conciliation Board.	(b) If a renewal or revision of the agreement or a new collective agreement has not been concluded before expiry of the *agreement*, the employer shall not, *except in the ordinary course of operation*, without consent by *the certified bargaining authority*, *increase or* decrease rates of wages or alter *any* term or condition of employment until a renewal or revision of the agreement or a new collective agreement has been concluded or *until* a Conciliation Board *has reported to the Minister*, *until* (*sic*) *the question of the acceptance or rejection of the report* (etc., as in previous section).	See above.		
11. Where in the opinion of the Board a bargaining agent no longer represents a majority of employees in the unit for which it was certified, the Board may revoke such certification and thereupon, notwithstanding sections fourteen and fifteen of this Act, the employer shall not be required to bargain collectively with the bargaining agent, but nothing in this section shall prevent the bargaining agent from making an application under section seven of this Act.	11 (7) If, at any time after a trade-union has been certified as bargaining agent for a unit of employees, the Board is satisfied after such investigation as it deems proper that the trade-union has ceased to be a trade-union, or that the employer has ceased to be the employer of the employees in the unit, it may cancel the certification. (8) Notwithstanding the provisions of subsection (7), where a business is sold the purchaser shall be bound by all proceedings under this Act before the date of purchase, and the proceedings shall continue as if no change in ownership had occurred.			

BARGAINING—*Conc.*

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
			Same as Dominion Bill.	
Same as Manitoba.		Same as Manitoba.	Same as Dominion Bill.	
			Same as Dominion Bill.	

Dominion Bill	**British Columbia Act**	**Alberta Act**	**Saskatchewan Act**	**Manitoba Act**
16. Where a notice to commence collective bargaining has been given under this Act and (a) collective bargaining has not commenced within the time prescribed by this Act; or (b) collective bargaining has commenced; and either party thereto requests the Minister in writing to instruct a Conciliation Officer to confer with the parties thereto to assist them to conclude a collective agreement or a renewal or revision thereof and such request is accompanied by a statement of the difficulties, if any, that have been encountered before the commencement or in the course of the collective bargaining, or in any other case in which in the opinion of the Minister it is advisable so to do, the Minister may instruct a Conciliation Officer to confer with the parties engaged in collective bargaining.	17. *Where collective bargaining has continued for at least fifteen days and* either party requests the Minister in writing to instruct a Conciliation Officer to confer with the parties to assist them to conclude a collective agreement or a renewal or revision thereof, and *where the request* is accompanied by a statement of the *difficulties* that have been encountered in the course of the collective bargaining, *the Minister* may instruct a Conciliation Officer to confer with *the* parties. 18. The Minister may also at any time, when he considers it advisable, instruct a Conciliation Officer to confer with the parties.	60 (6) *If negotiations for an agreement have continued for thirty days and either party to the negotiations believes that an agreement will not be completed in a reasonable time, it may so advise the Minister indicating the difficulties encountered, and may ask the Minister to intervene with a view to the completion of an agreement.* (7) *Upon application made pursuant to subsection* (6), *the Minister may, if he is satisfied that the matter is a proper one for intervention, request the Board to intervene with a view to the completion of an agreement.*		11. Same as Alberta, except that it says "*the Board*" instead of "the Minister". 12 (1) Upon receipt of advice under section eleven, the Board shall refer the matter to the Minister, who shall, within three days instruct a conciliation officer to confer with the parties and attempt to effect an agreement.
27. Where a Conciliation Officer has, under this Act, been instructed to confer with parties engaged in collective bargaining or to any dispute, he shall, within fourteen days after being so instructed or within such longer period as the Minister may from time to time allow, make a report to the Minister setting out	19. Where a Conciliation Officer has been *instructed to confer with parties,* he shall (etc., as in Dominion Bill).	(8) *Whenever a dispute exists or is apprehended, the Minister may, on his own initiative, if he thinks it expedient so to do, request the Board to intervene with a view to arriving at a settlement or prevention of the dispute.* (9) *Upon receipt of a request pursuant to subsection* (7) *or subsection* (8), *the Board shall forthwith in such manner as it thinks proper, endeavour to effect an agreement or settlement, and shall within fourteen days of receiving the request, report to the Minister setting forth the result of the reference.*		12 (2) A conciliation officer who has been instructed to confer with the parties under subsection one of this section shall, within fourteen days of rceiving his instructions, orwithin such louger period as the Minister may allow, report to the Minister, setting out in full:—
(a) the matters, if any, upon which the parties have agreed; (b) the matters, if any, upon which the parties cannot agree; and (c) as to the advisability of appointing a Conciliation Board with a view to effecting an agreement.	(a) the matters *upon which* the parties have agreed; (b) the matters *upon which* the parties cannot agree, and his recommendations with respect thereto; and (c) where the parties cannot agree, his recommendations as to the advisability of appointing a Conciliation Board.			(a) the terms, if any, upon which the parties have agreed; (b) the matters, if any, upon which the parties cannot agree and his recommendations with regard thereto; and (c) *whether, in his view, an agreement might be facilitated by appointment of a Conciliation Board.*

IATION

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
Same as Manitoba.	12. *If the negotiations have been carried on unsuccessfully for thirty days or if either party believes that they will not be completed within a reasonable time, each party may so notify the Board, indicating the difficulties encountered.*	Same as Manitoba.	Same as Dominion Bill.	
	13. *Upon receipt of such a notification, the Board shall inform the Minister thereof and the latter shall forthwith instruct a conciliation officer to confer with the parties and endeavour to effect an agreement.*	Same as Manitoba.		
Same as Manitoba.	14. The conciliation officer *shall report* to the Minister within fourteen days of *receiving his instructions.*	Same as Manitoba.	Same as Dominion Bill.	
Same as Manitoba.		Same as Manitoba.	Same as Dominion Bill.	
Same as Manitoba.		Same as Manitoba.	Same as Dominion Bill.	
Same as Manitoba.		Same as Manitoba.	Same as Dominion Bill.	

CONCIL

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
17. Where a Conciliation Officer fails to bring about an agreement between parties engaged in collective bargaining or in any other case where in the opinion of the Minister a Conciliation Board should be appointed to endeavour to bring about agreement between parties to a dispute, the Minister may appoint a Conciliation Board for such purpose.		(10) *In case the report of the Board is to the effect that it has failed to effect an agreement and recommends that the matter be referred to arbitration, the Minister shall forthwith refer the matter to arbitration and shall notify the representative* (sic) *of all parties to the dispute that he has so referred it; the arbitration shall be before a board of three arbitrators, and the provisions of sections* 74 to 80, *both inclusive, shall mutatis mutandis apply to the arbitration.*	16 (1) *The Minister may establish a board of conciliation to investigate, conciliate and report unpon any dispute between an employer and a trade union, or, if no trade union has been determined under this Act as representing a majority of the employees concerned, between an employer and any of his employees affecting any terms or conditions of employment of any employees of such employer or affecting or relating to the relations between such employer and all or any of his employees or releasing to the interpretation of any agreement or clause thereof between an employer and a trade union.*	
	20. Where a Conciliation Officer is unable to bring about an agreement between parties to a dispute, or in any other case where in the opinion of the Minister a board should be appointed to endeavour to bring about agreement between parties to a dispute, the Minister may appoint a Conciliation Board.			13 (1) *If a conciliation officer who has been instructed to confer with the parties recommends the appointment of a Conciliation Board, the Minister shall forthwith appoint a Conciliation Board consisting of three members appointed by the Minister after consultation with the parties as required by section thirty.*

THE COLLECTIVE

18. A collective agreement entered into by a certified bargaining agent is, subject to and for the purposes of this Act, binding upon (a) the bargaining agent and every employee in the unit of employees for which the bargaining agent has been certified; and (b) the employer who has entered into the agreement or on whose behalf the agreement has been entered into.	43. A collective *agreement* is binding upon: (a) the *bargaining authority* and every employee in the *unit* for which the *bargaining authority has been* certified; and (b) the employer who has entered into the agreement or on whose behalf an employers' organization has entered into the agreement.			
	44. Every person who is bound by a collective agreement, whether entered into before or after the coming into force of this Act, shall do everything he is required to do, and shall refrain from doing anything that he is required to refrain from doing, by the provisions of the collective agreement.			10 (5) *Every party to a collective agreement and every employee upon whom a collective agreement is made binding by this Act shall do everything he is, by the collective agreement, required to do and shall abstain from doing anything he is, by the collective agreement, required not to do.*

IATION—*Conc.*

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
			Same as Dominion Bill.	
Same as Manitoba.	14. *If the report shows that agreement has been impossible, the Minister shall appoint a council of arbitration pursuant to the Quebec Trades Dispute Act, the report of the conciliation officer taking the place of the application contemplated in the said Act.*	Same as Manitoba.	Same as Dominion Bill.	

AGREEMENT

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
			Same as Dominion Bill.	
Same as Manitoba.		Same as Manitoba.	18 (2) Every employer and every trade union and every person who is bound by a collective agreement on whose behalf a collective agreement been entered into, whether such agreement was entered into before or after the coming into force of this Act, shall do everything he is required to do and shall refrain from doing anything that he is required to refrain from doing by the provisions of the collective agreement.	

THE COLLECTIVE

Dominion Bill	**British Columbia Act**	**Alberta Act**	**Saskatchewan Act**	**Manitoba Act**
19 (1) Every collective agreement entered into after the commencement of this Act shall contain a provision for final settlement without stoppage of work, by arbitration or otherwise, of all differences between the parties to or persons bound by the agreement or on whos the agreement or on whose behalf it was entered into, concerning its meaning or violation.	45 (1) Every collective agreement entered into after the commencement of this Act shall contain a provision for final and conclusive settlement without stoppage of work, by arbitration or otherwise, of all differences between the persons bound by the agreement concerning its interpretation application, operation, or any alleged violation thereof.	61 (2) Every collective agreement entered into after the coming into force of this Act shall contain a provision for final settlement without stoppage of work of all differences between the parties to or persons bound by the agreement or on whose behalf it wa entered into, concerning its interpretation, application, operation or any alleged violation thereof.		18 (1) *Every collective agreement made after this Act comes into force shall contain a provision establishing a procedure for final settlement, without stoppage of work, on the application of either party, of differences concerning its interpretation or violation.*
19 (2) Where a collective agreement, whether entered into before or after the commencement of this Act, does not contain a provision as required by this section, the Board shall, upon application of either party to the agreement, by order, prescribe a provision for such purpose and a provision so prescribed shall be deemed to be a term of the collective agreement and binding on the parties to and all persons bound by the agreement and all persons on whose behalf the agreement was entered into.	45 (2) Same as Dominion Bill, except that it says "application of *any* party to the agreement," and ends up "and binding on all *persons* bound by the agreement."	3. Where a collective agreement entered into *after the coming into force* of this Act, does not contain, etc., as in Dominion Bill.		(2) *Where a collective agreement does not provide an appropriate procedure for consideration and settlement of disputes concerning its interpretation or violation thereof; the Board shall, upon application, by order, establish such a procedure.* 17. *Where an employee alleges that there has been a misinterpretation or a violation of a collective agreement, the employee shall submit the same for consideration and final settlement in accordance with the procedure established by the collective agreement, if any, or the procedure established by the Board for such case; and the employee and his employer shall do such things as are required of them by the terms of the settlement.*
20 (1) Notwithstanding anything therein contained, every collective agreement, whether entered into before or after the commencement of this Act, shall, if for a term of less than a year, be deemed to be for a term of one year from the date upon which it came or comes into operation, or if for an indeterminate term shall be deemed to be for a term of at least one year from that date and shall not, except as provided by section ten of this Act or with the consent of the Board, be terminated by the parties thereto within a period of one year from that date.	Same as Dominion Bill, except that it *omits* "as provided by section ten of this Act or",	61 (1) *No collective agreement shall be made for a term of less than one year but where the term of an agreement is more than one year, the agreement shall contain or be deemed to contain a provision for the termination thereof at any time after ten months on two months' notice by either party thereto.*	24 (1) Except as hereinafter provided, every collective bargaining agreement, whether heretofore or hereafter entered into, shall, notwithstanding anything contained therein, remain in force for a period of one year from its effective date and thereafter from year to year.	Same as Alberta, except "after *one year* on two months' notice."
20 (2) Nothing in this section shall prevent the revision of any provision of a collective agreement, other than a provision relating to the term of the collective agreement, that under the agreement is subject to revision during the term thereof.				

AGREEMENT—*Conc.*

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
Same as Manitoba.		Same as Manitoba.	Same as Dominion Bill.	
Same as Manitoba.		Same as Manitoba.	Same as Dominion Bill.	
Same as Manitoba.		15. *Every collective agreement, whether made before or after the effective date of this Act shall be deemed to run for a period of not less than one year from its operative date and shall not be capable of cancellation by the parties within that period without the consent of the Board; and when any such collective agreement is expressed to run for more than one year, it shall be deemed to contain a provision for the termination thereof at any time after one year from its operative date on two months' notice by either party thereto.*	Same as Dominion Bill.	
			Same as Dominion Bill.	

STRIKES AND

Dominion Bill	**British Columbia Act**	**Alberta Act**	**Saskatchewan Act**	**Manitoba Act**
		See above, and below.	8. (1) It shall be an unfair labour practice for any employer or employer's agent:— (j) To declare or cause a lock-out or to make or threaten any change in wages, hours, conditions of employment, benefits or privileges while any application is pending before the Board or any matter is pending before a board of conciliation appointed under the provisions of this Act.	See above.
21. Where a trade union on behalf of a unit of employees is entitled by notice under this Act to require their employer to commence collective bargaining with a view to the conclusion or renewal or revision of a collective agreement, the trade union shall not take a strike vote or authorize or participate in the taking of a strike vote of employees in the unit or declare or authorize a strike of the employees in the unit, and no employee in the unit shall strike, and the employer shall not declare or cause a lock-out of the employees in the unit, until (a) the bargaining agent and the employer, or representatives authorized by them in that behalf, have bargained collectively and have failed to conclude a collective agreement; and either (b) a Conciliation Board has been appointed to endeavour to bring about agreement between them and fourteen days have elapsed from the date on which the report of the Conciliation Board was received by the Minister; or	27. Where a *bargaining authority* has been certified under this Act, *the bargaining authority* shall not declare or authorize a strike of *the employees,* and no employee in the unit shall strike, and the employer shall not declare or cause a lockout of the employees, until:— (a) the bargaining agent and the employer, or representatives authorized by them in that behalf, have bargained collectively and have failed to conclude a collective agreement; and (b) a Conciliation Board has been appointed to endeavour to bring about agreement between them, and *until the report of the Conciliation Board has been sent to the parties and the provisions of sections* 31A *and* 31B shall thereupon be applicable.	81 (1) *During the period of time intervening between an application for the appointment of a Conciliation Commissioner under section 68, or for the intervention of the Minister pursuant to subsection* (6) *or subsection* (8) *of section* 60, *as the case may be, and fourteen days after the date fixed for the taking of a vote under subsection* (7) *of section 80, no employer who is a party to the dispute shall declare or cause a lockout, nor shall any employees who are parties to the dispute go on strike, nor shall any of the parties alter any of the conditions of employment including wages or hours, but the relationship of employer and employee shall continue uninterrupted by the dispute or anything arising out of the dispute.* *Subsection* (1) *shall not apply in any case where an application under section 68 is refused.* *Notwithstanding anything contained in subsection* (1) *no employees shall go on strike unless and until a vote has taken place under the supervision of the Board of Industrial Relations and a majority of the employees affected have voted in favour of a strike.*	8 (2) It shall be an unfair labour practice for any employee or any person acting on behalf of a labour organization:— (b) To take part in or persuade or attempt to persuade any employee to take part in a strike while an application is pending before the Board or any matter is pending before a board of conciliation appointed under the provisions of this Act.	21 (1) No employer shall go on strike until (a) bargaining representatives have been elected or appointed for the employees affected; and (b) an attempt has been made to effect an agreement under sections eleven and twelve, and fourteen days have elapsed since the Conciliation Board reported to the Minister.

LOCKOUTS

Ontario Act	**Quebec Act**	**New Brunswick Act**	**Nova Scotia Act**	**P E I Act**
See above.	24 (1) Any strike or lock-out is prohibited so long as an association of employees has not been recognized as representing the group of employees concerned, and so long as such association has not taken the required proceedings for the making of a collective agreement and fourteen days days have not elapsed since the receipt by the Minister of Labour of a report of the council of arbitration upon the dispute. Until the above conditions have been fulfilled, an employer shall not change the conditions of employment of his employees without their consent.	See above.		
Same as Manitoba.		Same as Manitoba	Same as Dominion Bill.	

STRIKES AND

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
		82. *Where there is between an employer and a trade union an agreement for the arbitration of disputes approved in writing by the Minister, the employer and the trade union shall, so long as the agreement remains in force, be exempt from the provisions of sections 68 to 81 of this Part.*		
22 (1) Except in respect of a dispute that is subject to the provisions of subsection two of this section. (a) no employer bound by or who, is party to a collective agreement, whether entered into before or after the commencement of this Act, shall declare or cause a lockout with respect to any employee bound by the collective agreement or on whose behalf the collective agreement was entered into; and	28 (1) No employer bound by *collective agreement*, whether entered into before or after the commencement of this Act, shall, during the term of the collective agreement, *cause a lockout* with respect to any *employees* bound by the collective agreement.			21 (2) Where an application has been made under this Act for the certification of bargaining representatives, the employer of the employees affected shall not declare or cause a lockout of the employees until an attempt has been made to effect an agreement under sections eleven and twelve and fourteen days have elapsed since the Conciliation Board reported to the Minister.
(b) during the term of the collective agreement, no employee bound by a collective agreement or on whose behalf a collective agreement has been entered into, whether entered into before or after the commencement of this Act, shall go on strike and no bargaining agent that is a party to the agreement shall declare or authorize a strike of any such employee.	(2) No employees bound by a collective agreement, whether entered into before or after the commencement of this Act, shall strike during the term of the collective agreement, and no person shall declare or authorize a strike of such employees.			21 (3) *No employer who is a party to a collective agreement shall declare or cause a lockout, and no employee bound thereby shall go on strike during the term of a collective agreement.*
22 (2) Where a collective agreement is in force and any dispute arises between the parties thereto with reference to the revision of a provision of the agreement that by the provisions of the agreement is subject to revision during the term of the agreement, the employer bound thereby or who is a party thereto shall not declare or cause a lockout with respect to any employee bound thereby or on whose behalf the collective agreement has been entered into, and no such employee shall strike and no bargaining agent that is a party to the agreement shall declare or authorize a strike of any such employee until	29. Where the term of a collective agreement expires or a collective agreement is terminated, no *bargaining authority* that was a party to the agreement shall declare or authorize a strike of employees who were bound by the collective agreement, *and no such employees shall strike*, and their employer shall not declare or cause a lockout of any such employees, after the said expiry or termination, unless:—			

LOCKOUTS—*Con.*

Ontario Act	**Quebec Act**	**New Brunswick Act**	**Nova Scotia Act**	**P E I Act**
Same as Manitoba.	24 (2) Any strike or lockout is prohibited for the duration of a collective agreement, until the complaint has been submitted to arbitration in the manner provided in the said agreement or, failing any provision for such purpose, in the manner contemplated by the Quebec Disputes Act (Chap. 167), and until fourteen days have elapsed since the award has been rendered without its having been put into effect.	Same as Manitoba.	Same as Dominion Bill.	
			Same as Dominion Bill.	
			Same as Dominion Bill.	

STRIKES AND

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
(a) the bargaining agent of such employees and the employer or representatives authorized by them on their behalf have bargained collectively and have failed to conclude an agreement on the matters in dispute; and either (b) A conciliation Board has been appointed to endeavour to bring about agreement between them and fourteen days have elapsed from the date on which the report of the Conciliation Board was received by the Minister; or (c) either party has requested the Minister in writing to appoint a Conciliation Board to endeavour to bring about agreement between them and fifteen days have elapsed since the Minister received the said request, and (i) no notice under subsection two of section twenty-eight of this Act has been given by the Minister, or (ii) the Minister has notified the party so requesting that he has decided not to appoint a Conciliation Board.	(a) the parties to the agreement or representatives authorized by them in that behalf, have bargained collectively and have failed to conclude a renewal or revision of the agreement or a new collective agreement, and (b) a Conciliation Board has been appointed to endeavour to bring about agreement, and until the report of the Conciliation Board has been sent to the parties and the provisions of sections 31A and 31B shall thereupon be applicable.			
23. Where a Conciliation Board has been appointed to conciliate a dispute between an employer and any of his employees otherwise than during the term of a collective agreement or in the cousre of collective baragining, no such employee shall strike and the employer shall not declare or cause a lockout with respect to any such employee until fourteen days have elapsed from the date on which the report of the Conciliation Board was received by the Minister.	30. If a dispute arises between the employer and any of his employees, otherwise than during the term of a collective agreement or in the course of collective bargaining with a bargaining authority or between parties to a collective agreement that has expired or been terminated, no employee shall strike, and the employer shall not declare or cause a lockout until a Conciliation Board has been appointed under this Act to conciliate the dispute, and until the report of the Conciliation Board has been sent to the parties and the provisions of sections 31A and 31B shall thereupon be applicable.			
	31. *In any case where a vote of both employers and employees is in favour of the acceptance of the report of a Conciliation Board, no employer shall cause a lockout and no person shall declare or authorize a strike or a lockout.*	See below.		

LOCKOUTS—*Con.*

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
			Same as Dominion Bill.	
			Same as Dominion Bill.	
			Same as British Columbia Act.	

Dominion Bill	**British Columbia Act**	**Alberta Act**	**Saskatchewan Act**	**Manitoba Act**
	31A. *Notwithstanding anything contained in this Act, no person shall declare or authorize a strike and no employee shall strike until after a vote of the employees in the unit affected as to whether to strike or not to strike has been taken and the majority of such employees who vote have voted in favour of a strike.*	See above.		
	31B. *Notwithstanding anything contained in this Act, where more than one employer is engaged in the same dispute with their employees, no person shall declare or authorize a lockout and no employer shall cause a lockout until after a vote of all employers as to whether to lock out or not to lock out has been taken and a majority of such employers who vote have voted in favour of a lockout.*			
	72. *In the case of a vote under section* 31A *or* 31B, *the vote shall be by secret ballot, and the Minister or a person appointed by him shall supervise the taking and counting of the vote; and in the case of any other vote under the provisions of this Act, the Minister may direct that the vote shall be by secret ballot, and the Minister or a person appointed by him may thereupon supervise the taking and counting of the vote.*	62. *The Board on the request of the employer or on receipt of a petition signed by not less than fifty per centum of the employees entitled to vote, or on the direction of the Minister, may direct a vote to be taken under its supervision on any question involving the relations between the employer and his employees on any unit or classification of the employees as to which there is a dispute or as to which it is desirable to have an expression of opinion by the employees.*		
25. Nothing in this Act shall be interpreted to prohibit the suspension or discontinuance of operations in an employer's establishment, in whole or in part, not constituting a lockout or strike.	32. Nothing in this Act shall be interpreted to prohibit the suspension or discontinuance of operations in an employer's establishment, in whole or in part, for a cause not constituting a lockout.	81 (2) Nothing *in this Part* shall *prohibit* the suspension or discontinuance of *any industry or of the working of any persons therein* for *any* cause not constituting a lock-out *or strike.*		21 (5) Same as Dominion Bill, except that it says "*an industry or/of the working of any persons therein for a cause.*"

LOCKOUTS—*Conc.*

Ontario Act	**Quebec Act**	**New Brunswick Act**	**Nova Scotia Act**	**P E I Act**
			Same as British Columbia Act, *except* that it says "*a secret* vote *by ballot*" (this covered in British Columbia by a later section,) and *omits* "*who vote.*" *Note also that there is no provision that the vote shall be under the Minister or the Board.*	
Same as Manitoba.	24 (3) *Nothing in this section shall prevent an interruption of work which does not constitute a strike or a lockout.*	Same as Manitoba.	Same as Dominion Bill.	

Conciliation Boards

The British Columbia Act's provisions are practically the same as those of the Dominion Bill. The only differences are: (1) There is a saving clause allowing M.L.A.'s to be members of Conciliation Boards without forfeiting their seats. (2) Boards must "afford opposing parties adequate opportunity to cross-examine witnesses called by the other party". (3) There is no minimum figure for expense allowances for witnesses. (4) Persons with a pecuniary interest, etc., are barred from membership of Boards.

The Nova Scotia Act's provisions are the same as those of the Dominion Bill.

The Alberta Act provides for what it calls "arbitration" *if a Conciliation Commissioner fails to bring about agreement.* The provisions of this part of the Alberta Act are much the same as those of the Dominion Bill. The main differences are: (1) Each of the members of the Board must be a British subject resident in Alberta for the three years preceding the case. (2) If the Minister thinks the Board or any member of it is unduly delaying the proceedings, he may remove the offender or offenders, and call upon the party or parties to nominate a new member or members. (3) The clause covering production of documents is rather more elaborate than in the Dominion Bill, and failure to appear as a witness or to produce documents is contempt of court. (4) Provision is made for each of the parties to be represented by not more than three representatives. (5) In its "award", the Board "shall so far as practicable deal with each item of the dispute, and shall state in plain terms, and avoiding as far as possible all technicalities, what in the Board's opinion ought or ought not to be done by the respective parties concerned". (6) The "award" "shall in all cases be retroactive to the date of the application for the appointment of a Conciliation Commissioner or for the intervention of the Minister". (7) "The question of acceptance or rejection of the award shall be submitted to a separate vote by the employees directly affected by the award, and employers (if more than one employer is involved) respectively, and the vote shall be held on such date as may be appointed by the Minister and shall be by secret ballot, and both in the case of the employees so directly affected, and of the employers, the Board of Industrial Relations *may* supervise the taking of the vote, and may give directions as to the taking of the vote similar to those provided for in subsection (7) of section 59." (8) *No court has power to enforce an award.*

The Saskatchewan Act provides for Boards of Conciliation and leaves it to the Minister to make regulations as to their constitution, procedure, etc.

The Manitoba, Ontario and New Brunswick Acts are, of course, in the main, identical copies of P.C. 1003 (the New Brunswick Act does not allow a Board member to affirm). Their provisions are, in the main, the same as those of the Dominion Bill. The main differences are: (1) The Minister does not have to appoint the persons nominated by the parties, or the chairman nominated by the other two members. (2) Persons with a pecuniary interest, etc., are barred from membership of Boards.

The Quebec Act provides for "councils of arbitration" under the Quebec Trade Disputes Act. These are, in general, similar to Boards of Conciliation. The chief differences are: (1) The members must be British subjects. (2) Each party may be represented by not more than three representatives. (3) The provisions for appointment and procedure are much less elaborately stated. (4) The proceedings are public, unless the council otherwise decides on any particular occasion. (4) The "award" must be made within one month after the hearings end.

The Prince Edward Island Act does not provide for Boards of Conciliation at all.

Arbitration

The Dominion Bill and the Nova Scotia Act provide for making the report of a Conciliation Board binding in law, if both parties accept it. The British Columbia Act's section is similar but more elaborate. The Alberta Act specifically provides that *no* "award" of a Board of Arbitration shall be enforceable by any court.

The Saskatchewan Act provides that an employer and a union may agree to refer any dispute or class of disputes to the *Labour Relations Board,* whose decision shall be enforceable in the same manner as any other decision of the Board. The Manitoba, Ontario, New Brunswick and Prince Edward Island Acts do not provide for arbitration. The Quebec Trade Disputes Act provides that the parties, *before* the "award" of the council of arbitration, may agree to be bound by the award, which then becomes legally binding.

Mediation

The British Columbia Act provides that the parties to a dispute may establish a Mediation Committee, which, if the Minister approves, shall be deemed to be a Conciliation Board, except for payment of the chairman.

Referees

The British Columbia Act has three very brief sections dealing with Referees. The Minister may appoint as Referee anyone he sees fit; the Referee has the same powers as a Board of Conciliation; and he deals with complaints of discrimination, etc., for union activity, but also of employer interference or domination in the formation, etc., of a trade union *or employees' organization.* The Referee reports to the Minister, who must consider the report before giving consent to prosecute. None of the other Acts has anything of the sort.

Industrial Inquiry Commission

The British Columbia Act has a section identical with the Dominion Bill's.

The Alberta Act has a series of sections dealing with the Conciliation Commissioner. This functionary is appointed by the Minister when a dispute exists and one of the parties asks for it. The appointment must be made within three days, if at all. The Commissioner must do all he can to get agreement, and must, unless the parties agree to an extension of time, report within fourteen days. On receipt of the report, the Minister must at once send copies to the parties and may publish it. If the Commissioner reports that he has failed to settle the dispute, the Minister *must* forthwith appoint a Board of Arbitration. The Saskatchewan, Quebec, New Brunswick and Prince Edward Island Acts have nothing of the sort. The Manitoba and Ontario Acts have a section providing that when anyone claims to have been discriminated against for union activity *or improperly coerced or intimidated into joining a union,* the Minister may appoint an Industrial Disputes Inquiries Commissioner, who, failing settlement, shall report to the Minister, who shall issue whatever order he deems necessary, which shall be final and binding; penalty, $500 (maximum) for each day of refusal or failure to comply with the order. The Nova Scotia Act is the same as the Dominion Bill.

OFFENCES AND

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
39. Every employer and every person acting on behalf of an employer who decreases a wage rate or alters any term or condition of employment contrary to section fourteen or section fifteen of this Act is guilty of an offence and liable on summary conviction to a fine not exceeding (a) five dollars in respect of each employee whose wage rate was so decreased or whose term or condition of employment was so altered, or (b) two hundred and fifty dollars, whichever is the lesser, for each day during which such decrease or alteration continues contrary to this Act.	33. Every employer and every person acting on behalf of an employer who changes any term or condition of employment of any employee of the employer contrary to sections 15 and 16 is guilty of an offence and liable, on summary conviction, to a fine not exceeding ten dollars in respect of each employee in respect of whom a condition of employment has been so changed for each day or part of a day during which the change continues contrary to this Act.	Penalty for breach of corresponding provision under general penalty section: Not more than $250 and costs, or, in default, not more than 90 days.	Penalty for breach of corresponding section under general penalty section for unfair labour practices: $25 to $200 for an individual, $200 to $5,000 a corporation, for first offence for later offences, such fine *and* imprisonment for not more than one year.	Penalty for breach of corresponding provision under general penalty section: not more than $100 for an individual, not more than $500for a corporation, employers' organization, employees' organization or trade union.
40. (1) Every person, trade union and employers' organization who violates section four or section five of this Act is guilty of an offence and liable upon summary conviction, (a) if an individual, to a fine not exceeding two hundred dollars; or (b) if a corporation, trade union or employers' organization, to a fine not exceeding five hundred dollars. (2) Where an employer is convicted for violation of paragraph (a) of subsection two of section four of this Act by reason of his having suspended, transferred, laid off or discharged an employee contrary to this Act, the convicting court, judge or magistrate, in addition to any other penalty authorized by this Act may order the employer to pay to the employee such sum as in the opinion of the court, judge or magistrate, as the case may be, is equivalent to the wages, salary or other remuneration that would have accrued to the employee up to the date of conviction but for such suspension, transfer, lay-off or discharge.	34. (1) Every trade union and every person acting or *representing himself to be* acting on behalf of a trade-union or *employees' organization* who contrary to this Act:— (a) Attempts at an employer's place of employment during working hours to persuade an employee to join *or not to join* the trade-union *or employees' organization:* (b) Supports, encourages, condones, or engages in activity intended to restrict or limit production that does not constitute a strike:— and every person, trade-union, employees' organization, and employers' organization who contrary to this Act:— (c) refuses or neglects to furnish any information, copy, or return required by the provisions of this Act; or	See below.		See immediately above.

PENALTIES

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
Same as Manitoba.		Same as Manitoba.	Same as Dominion Bill.	
Same as Manitoba.		Same as Manitoba.	Same as Dominion Bill.	

OFFENCES AND

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
(3) Every person, trade union and employers' organization who contrary to this Act refuses or neglects to comply with any lawful order of the Board is guilty of an offence and liable on summary conviction to a fine not exceeding fifty dollars for each day during which such refusal or failure continues.	34 (1) (d) Refuses or neglects to comply with any lawful order of the Board, is guilty of an offence and liable on summary conviction; (e) If an individual, to a fine not exceeding fifty dollars; or (f) If a corporation, trade union, employees' organization, or employers' organization, to a fine not exceeding one hundred and twenty-five dollars.	General penalty section.	9. *A certified copy of any order or decision of the Board shall within one week be filed in the office of a registrar of the Court of King's Bench and shall thereupon be enforceable as a judgment or order of the Court but the Board may nevertheless rescind or vary any such order.* 10 (1) *In any application to the Court arising out of the failure of any person to comply with the terms of any order filed in pursuance of section* 9, *the Court may refer to the Board any question as to the compliance of such person or persons with the order of the Board.* (2) *The application to enforce any order of the Board may be made to the Court by and in the name of any trade union affected.*	General penalty section.
	34 (2) Refusal or failure to comply with an order of the Board contrary to the provisions of this Act constitutes a separate offence as to each day or part of a day on which such refusal or failure continues.			
41 (1) Every employer who declares or causes a lockout contrary to this Act is guilty of an offence and liable upon summary conviction to a fine not exceeding two hundred and fifty dollars for each day that the lockout exists.	35 (1) Every employer who causes a lockout contrary to this Act is guilty of an offence and liable on summary conviction, to a fine not exceeding one hundred and twenty-five dollars for each day or part of a day that the lockout exists.	General penalty section.	Penalty for breach of corresponding section under general penalty section.	Same as Dominion Bill, except that the fine is $500.
41 (2) Every person acting on behalf of an employer who declares or causes a lockout contrary to this Act is guilty of an offence and liable on summary conviction to a fine not exceeding three hundred dollars.	35 (2) Every person acting on behalf of an employer who causes a lockout contrary to this Act, is guilty of an offence and liable, on summary conviction, to a fine not exceeding fifty dollars for each day or part of a day that the lockout exists.	General penalty section.	Penalty for breach of corresponding section under general penalty section.	

PENALTIES—*Con.*

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
Same as Manitoba.	44. *Any person who fails to comply with any obligation or prohibition imposed by this Act or by a regulation or decision of the Board shall be liable, unless another penalty is applicable, to a fine not exceeding one hundred dollars for the first offence, and to a fine not exceeding one thousand dollars for any subsequent offence.*	Same as Manitoba.	Same as Dominion Bill.	
Same as Manitoba.	43. *Any person declaring or instigating a strike or lock-out contrary to the provisions of this Act, or participating therein, shall be liable, in the case of an employer, association or officer or representative of an association, to a fine of not less than one hundred dollars and not more than one thousand dollars for each day or part of a day during which such strike or lockout exists, in all other cases to a fine of ten to fifty dollars for each such day or part of a day.*	Same as Manitoba.	Same as Dominion Bill, except that it *leaves out* "is guilty of an offence and"; sets the "penalty" at $150.	
			Same as Dominion Bill, except that it *leaves out* "is guilty of an offence," and says "*penalty.*"	

OFFENCES AND

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
41 (3) Every trade union that declares or authorizes a strike contrary to this Act is guilty of an offence and liable upon summary conviction to a fine not exceeding one hundred and fifty dollars for each day that the strike exists.	35 (3) Every trade union or employees' organization that authorizes or calls a strike contrary to this Act is guilty of an offence and liable, on summary conviction, to a fine not exceeding one hundred and twenty-five dollars for each day or part of a day that the strike exists.	General penalty section.	General penalty section.	41 (2) Every trade union *and every other employeess organization* that *authorize'* a strike contrary to this Act, etc., as in Dominion Bill, except that the fine is $200 and adds "on part of a day".
41 (4) Every officer or representative of a trade union who declares or authorizes a strike contrary to this Act is guilty of an offence and liable upon summary conviction to a fine not exceeding three hundred dollars for each day that the strike exists.	(4) Every officer or representative of a trade union or employees' organization who authorizes or calls a strike contrary to this Act is guilty of an offence and liable, on summary conviction, to a fine not exceeding fifty dollars for each day or part of a day that the strike exists.	General penalty section.	General penalty section.	General penalty section.
General penalty section, 42.	Same as Manitoba.	General penalty section.	General penalty section.	41 (1) Every employee who *goes on strike* contrary to this Act is guilty of an offence and liable on summary conviction to a fine of not more than *twenty* dollars for each day or part of a day that he is on strike.

PENALTIES—*Con.*

Ontario Act	**Quebec Act**	**New Brunswick Act**	**Nova Scotia Act**	**P E I Act**
Same as Manitoba.	See above.	Same as Manitoba.	41 (3) Every trade union that *declares* or authorizes a strike *shall be liable* upon summary conviction to a *penalty* not exceeding *one hundred and fifty* dollars for each day that the strike exists.	
Same as Manitoba.	See above.	Same as Manitoba.	Same as Dominion Bill, except that it says "*penalty.*"	
Same as Manitoba.	General penalty section.	Same as Manitoba.	General penalty section.	
			41 (5) *Any number of such offences arising out of the same declaring or causing or authorizing may be charged against one person in one information or in separate informations, and if charged in one information, the magistrate may in one conviction impose as a single penalty the cumulative fines, or terms of imprisonment in default of payment, and no conviction or dismissal in respect of any such offence shall afford a plea of autrefois convict or autrefois acquit in respect of an information charging an offence on a day subsequent to the day or days in respect of which any such conviction or acquittal was made.*	

OFFENCES AND

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
43 (1) Where the Minister receives a complaint in writing from a party to collective bargaining that any other party to such collective bargaining has failed to comply with paragraph (*a*) of section fourteen of this Act or with paragraph (*a*) of section fifteen of this Act, he may refer the same to the Board. (2) Where a complaint from a party to collective bargaining is referred to the Board pursuant to subsection one of this section, the Board shall inquire into the complaint and may dismiss the complaint or may make an order requiring any party to such collective bargaining to do such things as in the opinion of the Board are necessary to secure compliance with paragraph (*a*) of section fourteen or paragraph (*a*) of section fifteen of this Act. (3) Every employer, employers' organization, trade union or other person in respect of whom an order is made under this section, shall comply with such order.	36 (1) Every employer, employers' organization, person, trade union, or certified bargaining representative or employees' organization who refuses or fails to bargain collectively as required by this Act or fails to cause representatives authorized in that behalf to bargain collectively on his behalf as required by this Act is guilty of an offence and liable, on summary conviction: (a) If an individual, to a fine not exceeding twenty-five dollars; and (b) If a corporation, trade union, employees' organization, or employers' organization, to a fine not exceeding one hundred and twenty-five dollars. (2) A refusal or failure to bargain collectively as required by this Act or failure to cause representatives authorized in that behalf to bargain collectively as required by this Act constitutes a separate offence for each day or part of a day that the refusal or failure continues.	60 (4) *An employer refusing or failing to attend or to send a duly accredited representative to a meeting of which he has received notice in accordance with this section and any employer refusing to bargain or refusing, after the terms of an agreement have been settled, to execute a collective agreement, shall be guilty of an offence and liable on summary conviction to a fine not exceeding five hundred dollars and costs for each offence.*	8 (1) *It shall be an unfair labour practice for any employer or employer's agent:* (c) *to fail or refuse to bargain collectively with representatives elected or appointed (not necessarily being the employees of the employer) by a trade union representing the majority of the employees in an appropriate unit.* General penalty section.	General penalty section.
Penalty under section 40 (3) not over fifty dollars for each day during which refusal or failure to obey an order under section 43 (3) continues.				
42. Every person, trade union or employers' organization who does anything prohibited by this Act or who refuses or neglects to do anything required by this Act to be done by him is guilty of an offence and, except where some other penalty is by this Act provided for, the act, refusal or neglect is liable on summary conviction. (a) if an individual, to a fine not exceeding one hundred dollars, or (b) if a corporation, trade union or employers' organization, to a fine not exceeding five hundred dollars. (This is the general penalty section.)	37. Same as Dominion Bill except that it includes "employees' organization", and that the fines are $50 and $250.	95. *Any person who violates any provisions of this Act or the Regulations . . . or any order of the Board or any written direction of the chairman . . . for which no penalty is otherwise provided by this Act shall be liable on summary conviction to a fine of not more than two hundred and fifty dollars and costs and in default of payment to imprisonment for a term not exceeding ninety days.*	11 (1) *Any person who takes part in, aids, abets, counsels or procures any unfair labour practice shall, in addition to any other penalty which he has incurred or had imposed upon him under the provisions of this Act, be guilty of an offence and liable on summary conviction for a first offence to a fine of not less than $25 and not more than $200, if an individual, or not less than $200 and not more than $5,000, if a corporation, and upon a second and subsequent offence, to such fine and to imprisonment not exceeding one year.* (2) *No prosecution shall be instituted under this section without the consent of the Board.*	42. Every person, trade union, *employees' organization* or employers' organization who *contravenes any of the provisions of* this Act *is guilty* of an offence, and *unless some penalty is expressly provided by this Act for such contravention,* is liable on summary conviction, if an individual, to a *penalty* of not more than *one hundred* dollars, and if a corporation, employers' organization, *employees' organization* or trade union, to a *penalty* of not more than *five hundred* dollars.

PENALTIES—*Con.*

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
Same as Manitoba.	42. *An employer or association of employers who or which, having received the prescribed notice, fails to acknowledge as representing employees in his or its employ the representatives of an association recognized for such purpose by the Board, or to negotiate in good faith a collective labour agreement with them, shall be liable, for the first offence, to a fine of one hundred to five hundred dollars, and for any subsequent offence to a fine of two hundred to one thousand dollars with, in addition, in the case of an individual, imprisonment for not more than three months.*	Same as Manitoba.	Same as Dominion Bill.	5. . . . *Every employer shall recognize and bargain collectively with the members of a trade union representing the majority choice of the employees eligible for membership in said trade union, when requested so to bargain by the duly chosen officers of said trade union and any employer refusing so to bargain shall be liable to a fine upon summary conviction not exceeding One Hundred Dollars for each such offence and in default of payment to thirty days' imprisonment.*
			Same as Dominion Bill.	
Same as Manitoba.	See above.	Same as Manitoba.	Same as Dominion Bill.	

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
			12. *In addition to any other penalties imposed or remedies provided by this Act, the Lieutenant-Governor in Council, upon the application of the Board and upon being satisfied that any employer has wilfully disregarded or disobeyed any order filed by the Board, may appoint a controller to take possession of any business, plant or premises of such employer within Saskatchewan as a going concern and operate the same on behalf of His Majesty until such time as the Lieutenant-Governor in Council is satisfied that upon the return of such business, plant or premises to the employer the order of the Board will be obeyed.*	
45. A prosecution for an offence under this Act may be brought against an employers' organization or a trade union and in the name of the organization or union and for the purpose of such a prosecution a trade union or an employers' organization shall be deemed to be a person, and any act or thing done or omitted by an officer or agent of an employers' organization or trade union within the scope of his authority to act on behalf of the organization or union shall be deemed to be an act or thing done or omitted by the employers' organization or trade union organization or trade union.	38. If an employers' organization, employees' organization, corporation, or trade-union is guilty of an offence under this Act, any officer, agent, or authorized representative of the employers' organization, corporation, employees' organization, or trade-union who assented to the commission of the offence is a party to and guilty of the offence.			44 (2) If an employers' organization, *employees' organization, corporation or trade union* is guilty of an offence under this Act, any officer of the employers' organization, *employees' organization*, corporation, or trade union who assented to the commission of the offence is a party to and guilty of the offence.

PENALTIES—*Con.*

Ontario Act	**Quebec Act**	**New Brunswick Act**	**Nova Scotia Act**	**P E I Act**
Same as Manitoba.	46. *The following shall be a party to an offence and liable to the penalty provided in the same manner as the person committing the offence: any person who aids or abets the commission* thereof, and, when the offence is committed by a corporation or an association, every director, administrator, manager or officer shall be guilty of the offence who in any manner approves of the Act which constitutes the offence or acquiesces therein.	Same as Manitoba.	Same as Dominion Bill.	
	47. If several persons conspire to commit an offence, each of them shall be guilty of each offence committed by any of them in the carrying out of their common intention. 48. The penalties contemplated by this Act shall be imposed upon summary conviction proceeding pursuant to the *Quebec Summary Convictions Act* (Chapter 29, Revised Statutes of Quebec, 1941). Part II of the said Act shall apply to such proceedings.			
	50. If it be proved to the Board that an association has participated in an offence against section 20, the Board may, without prejudice to any other penalty, decree the dissolution of such association after giving it an opportunity to be heard and to produce any evidence tending to exculpate it.			

OFFENCES AND

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
46 (1) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Minister.	Same as Dominion Bill.	60 (5) No prosecution for *any infraction of the provisions of this section shall be commenced or carried on by any person other than a person authorized in writing by the Minister so to do.*	See above, 11 (2).	45. No prosecution for an offence under this Act shall be instituted except *by or* with the consent of the *Board, evidenced by a certificate signed by or on behalf of the chairman of the Board,*
44 (1) A person claiming to be aggrieved because of an alleged violation of any of the provisions of this Act may make a complaint in writing to the Minister and the Minister, upon receipt of such complaint, may require an Industrial Inquiry Commission appointed by him pursuant to section fifty-six of this Act or a Conciliation Officer to investigate and make a report to him in respect of the alleged violation.	42 (2) The Minister may require *the Board or* a Conciliation Officer to investigate and make a report to him in respect of any alleged violation of this Act before he gives any consent under this section to a prosecution in respect thereof.			
(2) Upon receipt of a report pursuant to subsection one of this section, the Minister shall furnish a copy to each of the parties affected and if the Minister considers it desirable to do so, shall publish same in such manner as he sees fit.				
(3) The Minister shall take into account any report made pursuant to this section in granting or refusing to grant consent to prosecute under section forty-six of this Act.				*and in exercising its discretion as to whether any such consent should be granted, the Board may take into consideration disciplinary measures that have been taken by an employers' organization or a trade union or employees' organization against the accused.*
50. Failure of a Conciliation Officer or Conciliation Board to report to the Minister within the time provided in this Act shall not invalidate the proceedings of the Conciliation Officer or Conciliation Board or terminate the authority of the Conciliation Board under this Act.	62. Same as Dominion Bill, except that it says "proceedings of the Officer or Board".			
51. No proceeding under this Act shall be deemed invalid by reason of any defect in form or any technical irregularity.	Same as Dominion Bill.	Same as Dominion Bill, except that it says "Part" instead of "Act".		Same as Dominion Bill, except that it says "*of* form".

PENALTIES—*Con.*

Ontario Act	**Quebec Act**	**New Brunswick Act**	**Nova Scotia Act**	**P E I Act**
Same as Manitoba.	49. *No penal prosecution may be taken under this Act without the written authorization of the Attorney-General.*	Same as Manitoba.	Same as Dominion Bill.	
			Same as Dominion Bill.	
			Same as Dominion Bill.	
Same as Manitoba.		Same as Manitoba.	Same as Dominion Bill.	
			Same as Dominion Bill.	
Same as Manitoba.		Same as Manitoba.	Same as Dominion Bill.	

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
58 (1) There shall be a labour relations board to administer Part I of this Act which shall be known as the Canadian Labour Relations Board and shall consist of a chairman, and such number of other members as the Governor in Council may determine, not exceeding eight consisting of an equal number of members representative of employees and employers.	55 (1) *At such time as it is considered advisable, the Lieutenant-Governor in Council may establish a Board which shall be known as the "Labour Relations Board (British Columbia)", and shall consist of a Chairman and such number of other members as the Lieutenant-Governor in Council may determine.*	5. (1) *There shall be a Board known as the "Board of Industrial Relations" which shall consist of such persons, not more than five in number, as may be appointed by the Lieutenant-Governor in Council and one of such persons shall be designated as the Chairman of the Board.*	4. *There shall be a Board to be known as the Labou Relations Board, composed of seven members appointed by the Lieutenant-Governor in Council at such salaries or remuneration as he deems fit. The Lieutenant-Governor in Council shall name a chairman and vice-chairman of the Board. The members of the Board shall be selected so that the Board shall be equally representative of organized employees and employers, and if the Lieutenant-Governor in Council deems it desirable, of the general public.*	3 (1) The Provincial Board shall consist of a Chairman and an even number of other members, not exceeding a total of six, equally representative of employers and employees; and a Vice-Chairman may be appointed to preside over the Provincial Board in the absence of the Chairman. (From text of agreement between the Dominion and the Province of Manitoba *re* administration of War-time Labour Relations Regulations.)
60. The Board may, with the approval of the Governor in Council, make rules governing its procedure and, where an application for certification in respect of a unit has been refused, the time when a further application may be made in respect of the same unit by the same applicant.	56. The Board may, with the approval of the *Minister*, make *such regulations* governing its procedure *under this Act as may be necessary to enable it to discharge the duties imposed upon it by this Act.* (See also above, section 11 (6).)	See above, sections 59 (5)–(10), 60 (9), and 62.	13 (1) The Board may, subject to the approval of the Lieutenant-Governor in Council, make such rules and regulations not inconsistent with this Act, as are necessary to carry out the provisions of this Act according to their true intent.	27 (1) The Board may, with the approval of the *Minister*, make such regulations as may be necessary to enable it to discharge the duties imposed upon it by this Act. (2) The Board may prescribe anything, which, under these regulations, is to be prescribed.
61 (1) If in any proceeding before the Board a question arises under this Act as to whether (a) a person is an employer or employee; (b) an organization or association is an employers' organization or a trade union; (c) in any case a collective agreement has been entered into and the terms thereof and the persons who are parties to or are bound by the collective agreement or on whose behalf the collective agreement was entered into (d) a collective agreement is by its terms in full force and effect; (e) any party to collective bargaining has failed to comply with paragraph (a) of section fourteen or with paragraph (a) of section fifteen of this Act; (f) a group of employees is a unit appropriate for collective bargaining; (g) an employee belong to a craft or group exercising technical skills; or (h) a person is a member in good standing of a trade union; the Board shall decide the question and its decision shall be final and conclusive for all the purposes of this Act.	58 (1) If *a question arises* under this Act as to whether (a) same as Dominion Bill. (b) Same as Dominion Bill. (3) Same as Dominion Bill down to "thereof". (d) *the persons who are bound by a collective agreement, or on whose behalf a collective agreement was entered into, are parties to an agreement;* (e) Same as Dominion (d), (f) *a person is bargaining collectively or has bargained collectively;* (g) Same as Dominion (f); (h) an employee belong to a craft *or profession;* or (i) Same as Dominion Bill (h). Same as Dominion Bill.		5. *The Board shall have power to make orders:—* (c) *requiring an employer to bargain collectively;* (d) *requiring any person to refrain from violations of this Act or from engaging in any unfair labour practice;* (e) *requiring an employer to reinstate any employee discharged contrary to the provisions of this Act and to pay such employee the monetary loss suffered by reason of such discharge;* See also sections 5 (a), (b) and (f), and section 6, above.	25 (1) If *a question arises* under this Act as to whether: (a) Same as Dominion Bill. (b) *the unit of employees appropriate for collective bargaining is the employer unit, craft unit, plant unit or a subdivision thereof;* (c) *an organization of employees is a trade union, employees' organization or employers' organization;* (d) *an agreement is a collective agreement;* (e) *an employer or certified bargaining representative of employees, is negotiating in good faith;* Same as Dominion Bill.
(2) A decision or order of the Board is final and conclusive and not open to question, or review, but the Board may, if it considers it advisable so to do, reconsider any decision or order made by it under this Act, and may vary or revoke any decision or order made by it under this Act.	(2) The Board may, etc., as in Dominion Bill, except that it ends up "any such decision or order".	90. The Board may at any time and from time to time with the approval of the Lieutenant Governor in Council vary, suspend of cancel any order made by it under this Act.	15. *There shall be no appeal from an order or decision of the Board under this Act, and the Board shall have full power to determine any question of fact necessary to its jurisdiction, and its proceedings, orders and decisions shall not be reviewable by any court of law or by any certiorari, mandamus, prohibition, injunction or other proceeding whatsoever.*	

BOARD

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
4 (1) *There shall be a Board which shall be known as the Ontario Labour Relations Board and shall consist of a chairman and not more than six other members.*	29. *There shall be a body called . . . the "Labour Relations Board of the Province of Quebec"* 30. *Such Board shall consist of a chairman and two other members appointed by the Lieutenant-Governor in Council who shall fix their remuneration.*	23. *There shall be a Board which shall be known as the Labour Relations Board and shall consist of a chairman and two or more other members.*	55 (1) *The Governor in Council may establish and appoint the members of a Board which shall be known as the "Labour Relations Board (Nova Scotia)", and shall consist of such number of persons as the Governor in Council may from time to time determine.*	
5 (7) Subject to the approval of the Lieutenant-Governor in Council, the Board may make rules or regulations governing its own procedure which are not inconsistent with this Act.	38. The Board may make regulations to govern the exercise of its powers . . . and generally, the carrying out of this Act. Such regulations shall come into force upon the approval of the Lieutenant-Governor in Council.	Same as Manitoba.	57. Same as British Columbia, except that it says "*Governor in Council*" instead of "Minister". See also above, section 9 (7).	
Same as Dominion Bill.		Same as Manitoba. Same as Dominion Bill.	the Board shall decide the question and the decision or order of the Board shall be *final and conclusive* and not open to question or review. but the Board may, etc., as in Dominion Bill.	
	41. The Board may, for cause, revise or cancel any decision or order rendered by it or any certificate issued by it.			

THE

Dominion Bill	**British Columbia Act**	**Alberta Act**	**Saskatchewan Act**	**Manitoba Act**
	(3) *Where a question set out in this section arises in any legal proceedings under this Act, if the question has not been decided by the Board, the Justice or Justices of the Peace, Magistrate, Judge or Court before whom it arises shall refer the question to the Board and stay further proceedings until the Board's decision is received.*			(2) *If* a question set out in *subsection one* arises *in any legal* proceedings, the Justice, etc., as in British Columbia (3), *shall*, if the question has not, etc., as in British Columbia (3).
58. (6) The Board may receive and accept such evidence and information on oath, affidavit or otherwise as in its direction it may deem fit and proper whether admissible as evidence in a court of law or not.	Same as Dominion Bill except that it says "in its *or his* discretion it *or he* may deem," etc.		14. The Board *and each member thereof and its duly appointed agents* . . . may receive and accept such evidence, etc., as in Dominion Bill.	The Board and each member thereof may receive, etc., as in Dominion Bill.

MISCELL

62 (1) Where legislation enacted by the legislature of a province and Part I of this Act are substantially uniform, the Minister of Labour may, on behalf of the Government of Canada, with the approval of the Governor in Council, enter into an agreement with the government of the province to provide for the administration by officers and employees of Canada of the provincial legislation. (2) (c) provides for appeals from the provincial Board to the Dominion Board if the provincial legislation so provides.		88. *The Lieutenant Governor in Council may by order declare that on and after a day to be fixed by the order, the provisions of this Part and their operation shall be suspended and inoperative with respect to every industrial dispute arising in relation to employment in the industry of coal mining so long as the order remains in force, and that in lieu thereof, the provisions of the Industrial Disputes Investigation Act, . . . or any other statute of Canada, that may be hereafter passed in substitution for the said Act, shall be in full force and effect with respect to every industrial dispute arising in relation to employment in the industry of coal mining . . .*		
67 (1) The Governor in Council may make regulations . . . (2) excluding an employer or employee or any class of employers or employees from the provisions of Part I of this Act or any of the provisions thereof; (3) generally for carrying any of the purposes or provisions of this Act into effect.	68. *The Lieutenant-Governor in Council may make regulations as to the time within which anything hereby authorized shall be done, and also as to any other matter or thing which appears to him necessary or advisable to the effectual working of the provisions of this Act.*	94. *The Lieutenant-Governor in Council may make such regulations not inconsistent with this Act as he may deem necessary for carrying out the provisions of this Act and for the efficient administration hereof.*		
		92. *In any prosecution for any offence against any of the provisions of this Act alleged to have been committed by an employer, the onus of proof that he is not an employer shall be upon the person charged with the offence.*		

BOARD—*Con.*

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
Same as Manitoba.		Same as Dominion Bill.		
Same as Manitoba.		Same as Manitoba.	Same as Manitoba.	

ANEOUS

			70. Substantially the same as Dominion Bill's 62 (1), mutatis mutandis.	

MISCELL

Dominion Bill	British Columbia Act	Alberta Act	Saskatchewan Act	Manitoba Act
				38. Every person, trade union or employers' or employees' organization to whom an order is issued or who is *required* to do or *abstain* from doing *anything* by or pursuant to this Act shall obey such order or do or abstain from doing such thing as required.

ANEOUS—*Conc.*

Ontario Act	Quebec Act	New Brunswick Act	Nova Scotia Act	P E I Act
Same as Manitoba.		Same as Manitoba.		
	18. *Nothing in this Act shall prevent an unrecognized association from entering into a collective agreement, but an agreement so entered into shall become void the day another association is recognized by the Board for the group represented by the latter association.*			
	17. Any association comprising at least twenty employees, corresponding to at least ten per cent of the group subject to a collective agreement entered into by another association, may submit in writing, on behalf of its members, to the employer who is a party to such agreement, any complaint resulting from a violation of this Act or of the said agreement, the employer must immediately convene the representative of the association which is a party to such agreement and the representative of the association which submitted the complaint, to be heard upon the investigation of such complaint.			

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Canada. Industrial Relations, Standing Committee on, 1947/48

SESSION 1947-48

HOUSE OF COMMONS

STANDING COMMITTEE

ON

INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

Bill No. 195—The Industrial Relations and Disputes Investigation Act.

WEDNESDAY, APRIL 14, 1948

TUESDAY, APRIL 27, 1948

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OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1948

ORDERS OF REFERENCE

House of Commons,
Monday, 2nd February, 1948.

Resolved,—That the following Members do compose the Standing Committee on Industrial Relations: Messrs. Adamson, Archibald, Beaudry, Black *(Cumberland)*, Blackmore, Boivin, Case, Charlton, Coté *(Verdun)*, Croll, Dechene, Dickey, Gauthier *(Nipissing)*, Gibson *(Comox-Alberni)*, Gillis, Gingues, Homuth, Johnston, Knowles, Lalonde, Lapalme, Lockhart, MacInnis, McIvor, Maloney, Maybank, Merritt, Mitchell, Pouliot, Raymond *(Beauharnois-Laprairie)*, Ross *(Hamilton East)*, Sinclair *(Vancouver North)*, Smith *(Calgary West)*, Timmins, Viau—35. Quorum 10).

Ordered,—That the Standing Committee on Industrial Relations be empowered to examine and inquire into all such matters and things as may be referred to them by the House; and to report from time to time their observations and opinions thereon, with power to send for persons, papers and records.

Thursday, 8th April, 1948.

Ordered,—That the following Bill be referred to the said Committee, viz.:—

Bill No. 195, An Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes.

Tuesday, 13th April, 1948.

Ordered,—That the name of Mr. Bourget be substituted for that of Mr. Lalonde on the said Committee.

Ordered,—That the name of Mr. Hamel be substituted for that of Mr. Raymond *(Beauharnois-Laprairie)* on the said Committee.

Wednesday, 14th April, 1948.

Ordered,—That the name of Mr. Skey be substituted for that of Mr. Homuth on the said Committee.

Ordered,—That the said Committee be empowered to print, from day to day, 700 copies in English and 200 copies in French of its minutes of proceedings and evidence and that Standing Order 64 be suspended in relation thereto.

Ordered,—That the said Committee be granted leave to sit while the House is sitting.

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

REPORT TO THE HOUSE OF COMMONS

Wednesday, April 14, 1948.

The Standing Committee on Industrial Relations begs leave to present the following in a

FIRST REPORT

Your Committee recommends:

1. That it be empowered to print, from day to day, 700 copies in English and 200 copies in French of its minutes of proceedings and evidence and that Standing Order 64 be suspended in relation thereto.

2. That it be granted leave to sit while the House is sitting.

All of which is respectfully submitted.

PAUL E. COTE,
Chairman.

(Concurred in this day)

MINUTES OF PROCEEDINGS

WEDNESDAY, April 14, 1948.

The Standing Committee on Industrial Relations met at 2.30 o'clock p.m.

Members present: Messrs. Bourget, Charlton, Cote (*Verdun*), Croll, Dechene, Dickey, Gauthier (*Nipissing*), Knowles, McIvor, Maloney, Merritt, Mitchell, Pouliot, Sinclair (*Vancouver North*), Smith (*Calgary West*), Timmins.

On motion of Mr. Gauthier, seconded by Mr. Croll,

Resolved,—That Mr. P. E. Cote be Chairman.

The Chairman thanked the Committee for the honour conferred on him and assured the Committee that he would strive to carry out his duties in an impartial and efficient manner.

The Chairman read a letter dated April 8, 1948, from Mr. M. Lalonde, M.P., addressed to the Minister of Labour, in which he tendered his resignation as Chairman of the Committee. The Chairman referred briefly to the circumstances which necessitated Mr. Lalonde's resignation and added that he was sure the Committee would join him in expressing their sincere regrets.

On motion of Mr. Smith, it was unanimously

Resolved,—That a letter be sent to Mr. Lalonde expressing the regrets of the Committee on the loss of his services and thanking him for the courtesy, fairness and efficiency with which he had carried out the business of the Committee.

On motion of Mr. McIvor, seconded by Mr. Gauthier,

Resolved,—That Mr. D. A. Croll be Vice-Chairman.

The Honourable H. Mitchell, Minister of Labour, briefly addressed the Committee.

On motion of Mr. Dechene,

Resolved,—That permission be sought to print, from day to day, 700 copies in English and 200 copies in French of the minutes of proceedings and evidence of the Committee.

On motion of Mr. Croll,

Resolved,—That the Committee ask leave to sit during sittings of the House.

The Orders of Reference were read and the Committee considered procedure. It was agreed that this be referred to a Steering Committee which would be set up.

On motion of Mr. Smith,

Resolved,—That Mr. Skey be a member of the Steering Committee.

On motion of Mr. Knowles,

Resolved,—That Mr. Gillis be a member of the Steering Committee.

On motion of Mr. Dechene,

Resolved,—That the selection of the additional members of this subcommittee be left with the Chairman.

On motion of Mr. Smith,

Resolved,—That the next meeting be at the call of the Chair.

The Committee adjourned at 2.50 o'clock p.m.

TUESDAY, April 27, 1948.

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. The Chairman, Mr. P. E. Cote, presided.

Members present: Messrs. Adamson, Archibald, Black *(Cumberland)*, Bourget, Case, Cote *(Verdun)*, Croll, Dechene, Dickey, Gauthier *(Nipissing)*, Gibson *(Comox-Alberni)*, Gillis, Gingues, Hamel, Johnston, Knowles, Lockhart, MacInnis, McIvor, Maybank, Merritt, Mitchell, Pouliot, Ross *(Hamilton East)*, Sinclair *(Vancouver North)*, Skey, Smith *(Calgary West)*, Timmins, Viau.

The Chairman read a letter he had sent on behalf of the Committee to Mr. Lalonde, the former Chairman, thanking him for his services and expressing regret that ill-health had necessitated his resignation.

The First Report of the Steering Committee was read, viz:—

> Your Steering Committee met Wednesday, 21st April, at 2.15 p.m. o'clock.
>
> *Members present*: Messrs. Bourget, Croll, Gillis, Maybank, and the Chairman.
>
> Your Committee considered the hearing of representations from Central Labour and Employer Organizations. As the views of such Organizations were presented at the 1947 session, and recorded as evidence, it was thought that the Committee was in a position to proceed with the clause-by-clause consideration of Bill No. 195.
>
> It was directed that the Chairman write to the principal Organizations along this line.
>
> An application from the Federation of Employee-Professional Engineers and Assistants requesting a hearing was received. It was agreed that this should stand over for further consideration.
>
> Also received were three submissions of the Committee on Industrial Relations and Labour Law, of the Ontario, the Nova Scotia, and the B. C. sections of the Canadian Bar Association, and a submission dated 12th April, 1948, from the Canadian Chamber of Commerce.
>
> It was recommended that the Committee meet twice weekly, on Tuesdays and Thursdays, at 10.30 a.m. to 1.00 o'clock p.m.
>
> All of which is submitted.

The Chairman read the letter that was sent to the representatives of the following organizations in compliance with a decision reached by the Steering Committee: viz:—

OTTAWA, April 23, 1948.

Re: Bill No. 195, An Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes.

Dear Sir:

The House of Commons Standing Committee on Industrial Relations will resume its sittings on Tuesday next, April 27th, to consider the above bill.

During the last session your association has appeared before this Committee to give its views and submit representations on an almost identical bill. Your submission as that of the other witnesses has been printed in the Committee's Minutes of Proceedings and Evidence and will be properly considered as the Committee examine the bill clause by clause.

Should you feel that any additional representations could be of assistance to the members on points which you have not already covered, I would appreciate it if you would kindly forward same to the undersigned who will see to it that they are properly brought to the attention of the Committee.

Thanking you for your interest and helpful cooperation, I am

Yours truly,

PAUL E. COTE, M.P.
Chairman.

Chairman, Legislative Committee of the Railway Transportation Brotherhoods,

General Manager, Canadian Construction Association.

General Secretary, Canadian Manufacturers Association.

Secretary, Canadian Chamber of Commerce.

President, La Confederation des Travailleurs Catholiques du Canada, Inc.

President, Canadian Congress of Labour.

President, Trades and Labor Congress of Canada.

General Secretary, Railway Association of Canada.

Replies were read to the above-mentioned letter, viz.

(*a*) Letter dated 24th April,—The Railway Association of Canada;
(*b*) Letter dated 24th April,—The Canadian Manufacturers Association;
(*c*) Letter dated 26th April,—The Trades and Labor Congress of Canada;
(*d*) Letter dated 26th April,—The Canadian Congress of Labour.

Debate followed.

On motion of Mr. Smith, the First Report of the Steering Committee was concurred in.

Mr. Smith moved that the Committee do not accept further oral representations this year.

Debate followed.

The question being put, it was resolved, on division, in the affirmative.

On motion of Mr. Case, it was ordered that a Brief, with supplement, dated 12th April, 1948, from the Canadian Chamber of Commerce, be printed. (See *Appendix "A"*).

The Chairman read a number of telegrams and letters embodying views of engineering organizations and other individuals relative to subsection (ii), section (i) of clause 2, Bill No. 195.

It was ordered that a Brief, dated 26th April, 1948, submitted by the Chemical Institute of Canada, be printed as an Appendix (See *Appendix "B"*).

On motion of Mr. Mitchell,

Resolved,—That consideration of subsection (ii), section (i), clause 2, be deferred until representations have been received from National Organizations of Engineers.

On motion of Mr. Adamson, it was,

Ordered,—That the Draft Labour Code, with explanatory memorandum of February, 1948, prepared by the Canadian Congress of Labour be printed as an Appendix. (See *Appendix "C"*).

On motion of Mr. Adamson,

Resolved,—That all written representations be screened by the Steering Committee before printing.

It was directed that telegrams be sent to the national employee and employer organizations advising them that their supplementary written representations could be received by this Committee no later than Thursday, 6th May.

The Committee adjourned at 11.55 o'clock a.m. to meet again at 10.30 o'clock a.m., Thursday, 29th April.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

House of Commons,
April 27, 1948.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Chairman, Mr. Paul E. Cote, presided.

The Chairman: Order, please. We have a quorum, gentlemen.

First, I would ask the clerk to acquaint the committee with the letter I have written to Mr. Maurice Lalonde.

The Clerk:

Ottawa, 15th April, 1948.

M. Lalonde, Esq., M.P.,
Room 421, House of Commons,
Ottawa, Ontario.

Dear Mr. Lalonde: Your letter of April 8, addressed to the Minister of Labour, in which you tendered your resignation as Chairman, was read to the Committee on Industrial Relations at a meeting held 14th April.

At this meeting, the following motion was unanimously adopted:

> That a letter be sent to Mr. Lalonde expressing the regrets of the committee on the loss of his services and thanking him for the courtesy, fairness and efficiency with which he carried out the business of the committee.

May I be permitted to add my own personal regrets on the circumstances which made necessary your resignation.

Yours very sincerely,

PAUL E. COTE, M.P.,
Chairman, Committee on Industrial Relations

Mr. Pouliot: Mr. Chairman, I would move a vote of thanks to Mr. Lalonde for the useful work he has done with this committee, and for the very able way in which he carried on in the past.

The Chairman: That was done at the last meeting, Mr. Pouliot.

Mr. Pouliot: Then I concur.

The Chairman: Now, gentlemen, before we start, if you will allow me I would like to say just a brief word. A committee such as our own will only be able to do its work properly and within a reasonable length of time if it sets up an orderly course of procedure and if it definitely adheres to it. Now, it is the special duty of the steering committee to consider this question of procedure and to make recommendations to the main committee. This year the steering committee is composed of Messrs. Bourget, Croll, Gillis, Maybank, Skey, Johnston and the chairman. The committee has held its first meeting. That was held on April 21, and I will ask the clerk to give us a report of the minutes of the meeting.

The Clerk:

FIRST REPORT—STEERING COMMITTEE—INDUSTRIAL RELATIONS

21st April, 1948.

Your Steering Committee met Wednesday, 21st April, at 2.15 p.m. o'clock.

Members present: Messrs. Bourget, Cote, Croll, Gillis, and Maybank.

Your committee considered the hearing of representations from central labour and employer organizations. As the views of such organizations were presented at the 1947 session, and recorded as evidence, it was thought that the committee was in a position to proceed with the clause-by-clause consideration of Bill No. 195.

It was directed that the chairman write to the principal organization along this line.

An application from the Federation of Employee-Professional Engineers and Assistants requesting a hearing was received. It was agreed that this should stand over for further consideration.

Also received were three submissions of the Committee on Industrial Relations and Labour Law, of the Ontario, the Nova Scotia, and the B.C. sections of the Canadian Bar Association, and a submission dated 12th April, 1948, from the Canadian Chamber of Commerce.

It was recommended that the committee meet twice weekly, on Tuesdays and Thursdays at 10.30 a.m. to 1.00 o'clock p.m.

All of which is submitted.

(Sgd) PAUL E. COTE,
Chairman.

The Chairman: Before I put the question on the adoption of the report of the steering committee, gentlemen, I would like to read to you a letter which I have forwarded to the main labour and management groups. These were: (1) Mr. A. J. Kelly, Chairman of the Legislative Committee of the Railway Transportation Brotherhood; (2) Mr. R. G. Johnson, General Manager, Canadian Construction Association; (3) Mr. J. M. McIntosh, General Secretary, Canadian Manufacturers Association; (4) Mr. D. L. Morrell, Secretary, Canadian Chamber of Commerce; (5) Gerard Picard, President, La Confederation des Travailleurs Catholiques du Canada Inc.; (6) A. R. Mosher, President, Canadian Congress of Labour; (7) Percy R. Bengough, President, Trades and Labour Congress of Canada; (8) J. A. Brass, General Secretary, Railway Association of Canada.

This is the letter.

Ottawa, April 23, 1948

Re: Bill No. 195, An Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes.

> Dear Sir: The House of Commons' Standing Committee on Industrial Relations will resume its sittings on Tuesday next, April 27th, to consider the above bill.
>
> During the last session your congress has appeared before this committee to give its views and submit representations on an almost identical bill. Your submission as that of the other witnesses has been printed in the Committee's Minutes of Proceedings and Evidence and will be properly considered as the committee examine the bill clause by clause.
>
> Should you feel that any additional representations could be of assistance to the members on points which you have not already covered, I

would appreciate it if you would kindly forward same to the undersigned who will see to it that they are properly brought to the attention of the committee.

Yours truly,

PAUL E. COTE, M.P.
Chairman, Standing Committee on Industrial Relations.

The letter was dated April 23, 1948. Before the discussion is opened would you like to hear the answers I have received?

Mr. Croll: Yes, in reply?

The Chairman: From the Railway Association of Canada there is a letter dated April 24, 1948, addressed to Paul E. Cote, M.P., Chairman, Standing Committee on Industrial Relations:

April 24, 1948.
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Paul E. Cote, Esq., M.P.
Chairman,
The Standing Committee on Industrial Relations,
Ottawa, Ontario.

Dear Mr. Cote: I have your letter of April 23rd with reference to Bill No. 195, which is at present receiving the attention of the Standing Committee on Industrial Relations, and no doubt you have now received the letter I addressed to you in this respect on the same day that your letter was written.

As pointed out in our communication, we desire to make oral representations to your committee and will be glad to have your advice as to when they can be heard.

Yours very truly,

J. A. BRASS,
General Secretary.

The letter referred to by Mr. Brass, which was written on April 23, 1948, is a two and a half page letter.

Mr. Smith: What is the gist of it?

The Chairman: The main purpose of it is concerning the definition of the word "employee", and asking for permission to submit representations to the committee in this connection.

Hon. Mr. Mitchell: May I suggest that we put the representations in the record. Then you can read them at your leisure.

The Chairman: The conclusion of this brief is:

> The Railway Association hereby requests that it be permitted to make oral representations to your committee on the matters aforesaid.

The only matter taken up in the brief is the definition of the word "employee" in the Act.

Mr. MacInnis: May I point out that there are two difficulties or perhaps obstacles to putting them in the record.

The Chairman: With your permission, I think it would be better to have all the answers received to my invitation read to the committee before opening the discussion.

Mr. MacInnis: I thought a decision was made to put this letter in the record.

The Chairman: It was just a suggestion made by the minister.

This is a letter from the Canadian Manufacturers Association dated April 24, 1948. It is addressed to Paul E. Cote, Chairman, Standing Committee on Industrial Relations.

> Dear Mr. COTE—I have your letter of April 23 on the above subject.
>
> The committees of the association have given a great deal of study to this subject and have completed the representations which they desire to make. The association is grateful for the opportunity provided by the committee to submit these representations at the committee's convenience.
>
> Yours faithfully,
>
> (Sgd) J. T. STIRRETT,
> *General Manager.*

The next is a letter from The Trades and Labor Congress of Canada, dated April 26, 1948. It is addressed to Paul E. Cote, Chairman, Standing Committee on Industrial Relations and reads as follows:—

> Replying to your communication of the 23rd instant extending an invitation to The Trades and Labor Congress of Canada to present additional representations to the Standing Committee on Industrial Relations *re* the above bill:
>
> We have considered Bill 195 and appreciate the improvements that have been made in some of the provisions contained in Bill 338.
>
> On behalf of The Trades and Labor Congress of Canada, we are prepared to accept Bill 195 as a good piece of legislation that will go a long way in establishing what most Canadians desire—peace and stability in labor relations.
>
> For the information of your committee, we desire to point out that since the Executive Council of this Congress appeared before the Standing Committee on Industrial Relations on July 1, 1947, the question of a Dominion Labor Code, the presentation as made to the parliamentary standing committee last session and the requests made to the dominion government were fully considered at the Sixty-second Annual Convention of The Trades and Labor Congress of Canada, held in the city of Hamilton, September 24 to October 4, 1947.
>
> The position taken by the Executive Council of this Congress on the question of the labor code, following due consideration pro and con, was unanimously endorsed.
>
> We are also pleased to state that all the railway shop trades, as represented in Division No. 4, both C.P.R. and C.N.R., as well as the railway brotherhoods in running service, unanimously endorsed the action taken by this Congress on this question.
>
> I am enclosing copy of proceedings of the 1947 convention of this Congress. On pages 34 to 41, inclusive, is set out the report of the Executive Council to the convention. Last two paragraphs, page 228, under caption "Labor Code" to page 235: The report of the committee was adopted.
>
> We are also enclosing for the information of your committee a copy of the memorandum presented to the dominion government by The Trades and Labor Congress of Canada on the 4th of March, 1948. On page 5, National Labor Code, the views of this Congress are also set out.
>
> Should you require further copies of the documents enclosed for the convenience of the members of your committee we would be very pleased to supply them.
>
> We are also enclosing for your information copy of the report of the commission recently appointed to inquire into a dispute between Colonial

Steamships Limited and the Canadian Seamen's Union. There is nothing we could add that would exemplify the urgent need of proper legislation for the settlement of industrial disputes than is set out in this report.

In conclusion, on behalf of The Trades and Labor Congress of Canada, we respectfully urge the Standing Committee on Industrial Relations to expedite the passage of Bill 195 as quickly as possible.

Yours truly,

(Sgd.) PERCY R. BENGOUGH,
President.

(Sgd.) J. W. BUCKLEY,
General Secretary-Treasurer.

THE TRADES AND LABOR CONGRESS OF CANADA.

The next letter is from the Canadian Congress of Labour, and reads:—

April 26, 1948.

Mr. PAUL E. COTE, M.P.,
Chairman, Standing Committee on Industrial Relations,
House of Commons,
Ottawa, Ontario.

Dear Mr. COTE:—In reply to your letter of April 23, with regard to the sittings of the House of Commons' Committee on Industrial Relations, to consider Bill 195, the Congress feels that there are a number of aspects of this Bill which require special representations and discussion, in addition to the material submitted to the committee at the last session of parliament.

In the circumstances, the Congress would appreciate an opportunity to present its views to the committee on Friday afternoon of this week, April 30, or at any time which will be convenient to the committee during the following week.

Thanking you for your courtesy, and with all good wishes, I am,

Yours sincerely,

NORMAN S. DOWD,
Executive Secretary.

That concludes the recital of the answers to the letters which I wrote. Mr. MacInnis now has the floor.

Mr. MACINNIS: I was going to suggest, arising out of the proposal made by the Minister of Labour, that there are two objections to putting this material in the record now. The first objection is that it may be some time before we can get the printed record, and if we are to expedite the work of this committee we should have the material immediately before us so that we may give attention to it. I notice also that the minister said we could look it over at our leisure. If he can find the leisure for us I would have no objection to the suggestion.

Hon. Mr. MITCHELL: I was not speaking with respect to my own leisure.

Mr. MACINNIS: I think it would be preferable to mimeograph those submissions or communications, and let the members of the committee have them as quickly as possible so that we will not hold up the work of the committee while awaiting the printed record.

Hon. Mr. MITCHELL: I was indicating that basically the submissions have not changed since last year. The Canadian Chamber of Commerce, the Canadian Manufacturers' Association, the Canadian Construction Association, the Trades and Labour Congress of Canada, the Catholic Syndicates, the Railway Brotherhood, and the Canadian Congress of Labour submissions are no different in principle to what they were a year ago. The question raised by the Railway Association of Canada is, in my judgment, a simple question which may be decided from the written submission. We have a submission from the law society and I met their committee and discussed the submission which deals mainly with conciliation board matters. I am anxious to see this bill put in the statute books this year and I think such an end is the responsibility of the committee to the employers, to the unions, to the Canadian people, and to the provincial governments. I think it is absolutely essential that we use every effort to expedite the passing of this bill.

Mr. CASE: I wonder how much progress we are going to make if we are going to hear all those briefs again? That is the big problem in my mind and yet I suppose it is important that there should be an opportunity given where necessary.

Mr. SMITH: I am going to move—to bring the matter to a head—that we do not accept further oral representations. All these people had an opportunity to come last year and most of them have supplemented what they then said by written briefs. I think it would be a waste of time to go over again what we did last year.

The CHAIRMAN: If you do not mind me interrupting, Mr. Smith, we have the report of the steering committee which must be disposed of first.

Mr. SMITH: All right.

The CHAIRMAN: I would require a motion for the adoption of the first report.

Mr. SMITH: What does the report say about the point which I have raised?

The CHAIRMAN: It directs the chairman to communicate with the four main labour organizations and the four main management organizations, advising them of the sittings and inviting them to forward to the chairman further representation which they might have.

Mr. SMITH: I will move the adoption of the steering committee report.

Carried.

The CHAIRMAN: Would you put your motion again, Mr. Smith?

Mr. SMITH: I am going to move that this committee this year do not hear further oral representations. You observe that about the only group which that affects are the lawyers who, I think, did not appear.

Mr. CROLL: Yes, they appeared.

Mr. SMITH: My motion is doubly sound then because they should not be heard again. My motion is that we do not hear further oral representations.

Mr. GAUTHIER: I second that.

Mr. GILLIS: Were you not informed by the Canadian Congress of Labour that they did intend to submit further oral evidence before this committee?

The CHAIRMAN: That is the purport of the letter I have read.

Mr. GILLIS: I was going to say that the steering committee recommended, after adoption of the report, that the door would be left open to anyone who wished to make further submissions.

Hon. Mr. MITCHELL: Any new matter.

Mr. GILLIS: It is still a new matter. Mr. Smith has moved a motion.

The CHAIRMAN: Before you go any further I will quote the reference in the report to the matter that has just been raised: "Your committee considered the hearing of representations from Central Labour and employer organizations. As the views of such organizations were presented at the 1947 session, and recorded as evidence, it was thought that the committee was in a position to proceed with the clause-by-clause consideration of bill No. 195."

Mr. Gillis: You have read a letter from the Canadian Congress of Labour indicating that they desire to come here and submit further evidence orally. Now, Mr. Smith's motion informs this committee that after inviting them to come here for that purpose we are not going to give them the opportunity of appearing. It does not make sense to me.

Mr. Smith: Oral representations.

Mr. Gillis: They already have a bill here.

Mr. Smith: What do they want to be heard again for?

Mr. Gillis: To submit an argument. Perhaps you will not understand that. It may be necessary for somebody representing them to come here and explain certain things. Now, you are suggesting a motion to say that they cannot come.

Hon. Mr. Mitchell: My good friend Mr. Gillis has said that we do not want to permit somebody to come here to explain something. I am not talking particularly of labour relations; but I have had submissions from the Canadian Manufacturers Association and also from Canadian Chambers of Commerce and employer organizations saying, "Let us go into this thing with our eyes open." Do you want to go into this matter all over again this year? If you take up a lot of time you will have no bill. I think I should say that to you.

Mr. Gillis: The point I wanted to make is that the minister is here to explain the government's bill.

Mr. Croll: May I say that in the report originally adopted our thought was not to hear all representations, we thought that we could get by with that; but at the same time we felt that we ought to offer these people the opportunity to come here if they have something new to add to previous submissions, something that may have arisen in the period of one year's time. Now, here we have one of the largest labour organizations. The Canadian Manufacturers Association, as I understand it, have sent a brief and they say that they have nothing further to add. That brief will probably be incorporated in the minutes. It may be a change over from last year or it may not; but certainly the C.C.L. feel that they have further representations to make and I think that we can very well set aside, say, Friday and hear all the representations that need to be made from different groups, but limiting the time—give them an hour's time or a half hour's time or something like that, and we would have the whole matter covered on Friday, and we shall not have closed the door to them and they will have no complaints. I think that is the better way to do it, rather than to refuse an organization to be heard here. Otherwise we may find constant objection. Others will say that they did not have an opportunity of being heard. There may be some things that they feel are objectionable. By fixing a time limit for Friday we will be covering that hurdle and we will be able to start on the bill on Monday or Tuesday morning.

Mr. McIvor: Mr. Chairman, I understand that this committee is meeting on Tuesday and Thursday; will Friday be an extra day? I think if you are leaving the door open to hear organizations that have something new to add that no organization should be barred; everybody should be treated alike.

The Chairman: Just to keep the record clear, following Mr. Gillis' remarks, I will quote again the last paragraph of the invitation which we have sent to the labour and management associations.

> Should you feel that any additional representations could be of assistance to the members on points which you have not already covered, I would appreciate it if you would kindly forward same to the undersigned who will see to it that they are properly brought to the attention of the committee.

I assume that the meaning which I have placed in this paragraph has been well understood, at least by the Trades and Labour Council, who have sent all their material, and offering to provide additional copies to the members of the committee.

Mr. MacInnis: Inasmuch as we are discussing an Act for the solution and betterment of industrial disputes, it seems to me that it would be a bad thing if we began, with an Act like this, in limiting unduly the representations which might be made to us by the parties concerned, or the parties who will be concerned with this legislation. I doubt if there would be a great many representations made this year; but if there are any of the parties who are concerned with this legislation and who wish to come before us, I think it would be well, when we have the time, to allow them to appear, not only on sufferance, but to welcome them here and to let them state their case.

I agree entirely with the Minister that we should get this legislation passed at this session and get it on the Statute books. It is true that we failed to get it on the Statute books last year; but if we could get it on the Statute books, it would be much more effective if we could have as much harmony and agreement as possible in putting it there. So I would support what was said by Mr. Croll because I think it would meet the situation very well.

Mr. Johnston: How many organizations want to make oral representations?

Mr. Croll: Two.

Mr. Johnston: If there are only two—

The Chairman: Well, I have other correspondence which I have not read as yet, which makes reference to the definition of employees; and this correspondence comes from professional engineers of Canada and they have offered to send in written representations and to send some representatives here to give moral support to their representations.

Mr. Johnston: How many are there altogether who would like to appear orally?

The Chairman: They would total three.

Mr. Smith: If those three come in, then all the others will want to come in as well.

Mr. Adamson: If we open the door for one, we will have to open it for everybody. I personally have received three requests to appear before this committee from professional people; and I said to them that I thought their briefs could be submitted in writing to their greater advantage than for them to come down here and take up the time of the committee.

This is the third time this committee has been set up; this will be the third session when we have tried to produce an Act. Twice before we failed. If we are going to bring in an Act, surely it is now up to us on our own responsibility, as a committee of the House of Commons, to pass on that Act.

Mr. Johnston: It is a very important piece of legislation, particularly as it applies to labour-management as well; and I for one would be hesitant in trying to rush it through unduly. I can see the importance of trying to get the legislation through, as the Minister has suggested. But I think we would make speed faster if we did it carefully and thoroughly as we went along.

Mr. Case: If we are going to adopt Mr. Croll's suggestion that we set a time limit for them to come here and to present their briefs, then, if there is to be no cross-examination of the witnesses, it would be no better than to receive a written submission. So I think that the written submission would be better. And if we started in to cross-examination, we would be here for a long time. Therefore, I would support Mr. Smith's motion that we have just written briefs.

The CHAIRMAN: Mr. Smith, your motion would not shut out the submission of written evidence at any stage of this committee.

Mr. SMITH: I assumed that we could all read and write. That is the purport of my motion.

The CHAIRMAN: Well, gentlemen, are you ready for the question?

The CLERK OF THE COMMITTEE: It is moved by Mr. Smith and seconded by Mr. Gauthier that the committee do not accept further oral representations this year.

The CHAIRMAN: You have all heard the motion. All those in favour will please raise their hands? All those against? The motion is carried.

Now, I have further correspondence which I would like to place on the record. First, I have a brief from the Canadian Chamber of Commerce, dated April 12, 1948, which brief, I understand has been circulated among the members of the committee.

Mr. McIVOR: Yes.

The CHAIRMAN: Would you like to have this brief printed in the Minutes of Evidence?

Mr. GAUTHIER: I believe it should be.

The CHAIRMAN: I have a brief from the Canadian Chamber of Commerce, which has been circulated among the members of the committee, and I now ask the committee what their pleasure is. Shall we keep it as part of our records, or shall we print it as part of the evidence today?

Mr. CASE: I believe this brief should be printed because some members are misled.

The CHAIRMAN: All those in favour?

Carried.

(See Appendix)

The rest of the correspondence concerns the position taken by professional engineers, and I have a letter from Mr. Dave Croll, M.P., dated April 19, 1948, addressed to P. E. Cote, Chairman, Industrial Relations Committee, and the letter reads as follows:

> Dear Mr. Chairman:—I have received representations from the Federation of Employee-Professional Engineers and Assistants who are desirous of an opportunity to make representations to the Committee with a view to having the engineers included under Bill 195.
>
> This is the labour organization formed among employed professional engineers for collective bargaining purposes and the organization has been active in obtaining certifications and making agreements on behalf of employed professional engineers ever since collective bargaining codes were set up under P.C. 1003 and by provincial legislation. There are 1,100 members of this organization.
>
> Would you please bring this to the attention of the committee and communicate with Mr. Arthur L. Fleming of Fleming, Smoke and Mulholland, 330 Bay street, Toronto, whose firm is acting on behalf of the engineers.
>
> Yours very truly,
>
> (Sgd) DAVE CROLL

Then I have a letter from the Canadian Council of Professional Engineers, 18 Rideau Street, Ottawa, dated April 21, 1948, addressed to the Chairman.

Re: Bill No. 195,—An Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes.

Dear Sir:—The Canadian Council of Professional Engineers and Scientists in the membership of which are included the following organizations:—

Agricultural Institute of Canada.
Canadian Association of Physicists.
American Institute of Electrical Engineers, Canadian District.
Canadian Institute of Mining and Metallurgy.
Canadian Dietetic Association.
Canadian Society of Forest Engineers.
The Chemical Institute of Canada.
Dominion Council of Federated Professional Employees.
Association of Professional Engineers of British Columbia.
Association of Professional Engineers of Alberta.
Association of Professional Engineers of Saskatchewan.
Association of Professional Engineers of Ontario.
Institute of Radio Engineers, Canadian Council.

Royal Architectural Institute of Canada is interested in Collective Bargaining as it affects professional engineers and scientists. To the Hon. Humphrey Mitchell, Minister of Labour, it expressed its attitude in a letter of February 13, 1947, on the draft Labour Bill which was circulated prior to the introduction of Bill No. 338, of 1947.

Since first reading was given Bill No. 195 our Council has been studying the proposed Act. It wishes to present a brief to your Committee—

Mr. SMITH: How do you spell "Council"?

The Hon. The MINISTER: Yes, how is the word "Council" spelled in that letter?

The CHAIRMAN: Council is spelled as C-o-u-n-c-i-l.

. . . embodying its views; and if the opportunity is available later to support these views in an oral presentation. Hence I would appreciate being informed as to the closing date for submitting briefs and as to whether or not there will be an opportunity of our representatives appearing before your Committee in support of its brief.

In the event that any telephone messages may be necessary contact may be made with our Secretary, Mrs. M. L. White, in the afternoon, at 2-9584, or with our Liaison Officer, L. L. Bolton, at his residence 4-0119.

Yours sincerely,

(sgd) W. J. GILSON,
Chairman.

Then I have a wire dated April 27, 1948, addressed to the Chairman from the Association of Professional Engineers of Ontario. The wire reads as follows:

> Association of professional engineers of Ontario representing more than half of professional engineers in Canada, request that no final action be taken on section two subsection 1 of Bill 195 and referring to definition of "employee" until we have had opportunity of submitting brief now being prepared.
>
> (sgd) Association of Professional
> Engineers of Ontario
>
> per GEO. B. LANGFORD.

Now I have a good number of wires which are strongly advocating the exclusion of professional engineers. They are all in about the same phraseology so, in order to save time I will just give you the names at this time, but it may be well to have these wires appear just as they are in the record. The first wire is dated April 26, 1948, and is addressed to Arthur MacNamara, Deputy Minister of Labour, Ottawa.

> Failing separate legislation for engineering profession only strongly urge bill 195 excluding profession be adopted.
>
> (sgd) D. B. ARMSTRONG,
> 4196 Hingston Ave.,
> Montreal, P.Q.

The second wire is from R. M. Richardson, President, Association of Professional Engineers of New Brunswick:

> Dear Sir: Understand further agitation from same quarters re Bill 195 our Association favours Bill as it stands excluding professional engineers.

And the next wire is from G. M. Wynn, 485 McGill Street, Room 706, Montreal, P.Q.

Mr. POULIOT: What is his business?

The CHAIRMAN: It is not indicated.

Mr. MCIVOR: Does he give any reason?

The CHAIRMAN: Oh, yes. It is the same wire as the other one.

> Failing separate legislation for engineering profession only strongly urge Bill 195 excluding profession be adopted.

The next wire is from James S. Bryant, 4637 Royal avenue, Montreal, a professional engineer.

> Strongly urge that Bill 195 be adopted so as to *include* professional engineers.

The next wire is from J. L. Pidoux, 4329 Walkley avenue, Montreal, P.Q.

> Failing separate legislation for engineering profession only strongly urge Bill 195 excluding profession be adopted.

The next wire is from J. R. Desloover, 5377 Earnscliffe, Montreal, professional engineer.

> Strongly urge that professional engineers be included in Bill 195 on equal footing with other professionals in bill.

The next wire is from J. M. Crawford, Member Montreal Branch Executive Engineering Institute of Canada.

> Failing separate legislation for the engineering profession only I strongly urge Bill No. 195 excluding the profession be adopted.

The next wire is from O. S. Hartvik, Senior Design Engineer care C. D. Howe Company Limited.

> I am very much in favour of the passing of Bill 195 as proposed to exclude engineers from collective bargaining. Urge that you support this bill to the full extent.

The next wire is from Harrison G. Burbridge, Professional Engineer, Port Arthur, Ontario.

> Labour Bill in respect to professional engineers is satisfactory as at first reading exclusion from act is essential to profession.

The next wire is from G. S. Halter, Assistant Electrical Design Engineer, care C. D. Howe Company Limited.

> Earnestly urge your utmost support of Bill 195 as it stands to exclude engineers from collective bargaining agreements.

The next wire is from R. W. Stedman, 252 St. James Street, Port Arthur, Ontario.

> Strongly urge Bill 195 be passed as it stands excluding engineering profession from collective bargaining.

The next wire is from L. M. Nantel, Professional Engineer, 1685 St. Joseph Boulevard E., Montreal, P.Q.

> Failing separate legislation for engineering profession only strongly urge adoption of Bill 195 as excluding profession.

The next wire is from L. A. Duchastel, Member Executive Committee, Montreal Branch Engineering Institute of Canada, 40 Kelvin Avenue, Outremont, P.Q.

> Failing separate legislation for engineering profession only strongly urge Bill 195 exclusive profession be adopted.

The next wire is from Maurice Prevost, Professional Engineer, Room 804, 132 St. James Street, West, Montreal.

> Failing separate legislation for engineering profession only strongly urge Bill 195 excluding profession be adopted.

The next wire is from W. Taylor-Bailey, 3018 Trafalgar Avenue, Montreal.

> Failing separate legislation for engineering profession only strongly urge Bill 195 excluding profession be adopted.

The next wire is from R. N. Coke, Chairman, Engineering Institute of Canada, Montreal Branch, 305 Strathern Avenue, Montreal, West.

> Failing separate legislation for engineering profession only, strongly urge Bill 195 excluding engineering profession be adopted.

The next wire is from E. Van Koughnet, Professional Engineer, 551 Lakeshore Road, Beaurepaire, P.Q.

> Failing separate legislation for engineering profession only strongly urge Bill 195 excluding profession be adopted.

This next wire is in in different terms and I will read it. It is from K. G. Cameron, 38 Dufferin Road, Hampstead, P.Q. and it reads as follows:

> Reference bill Collective bargaining I deplore attempts to lower engineering profession by inclusion of professional engineers in any form of collective bargaining. Our professional standing at least equals medical or legal which were never included. My earnest request for exclusion is based on 35 years of professional experience.

Mr. POULIOT: Is he stuck up?

The CHAIRMAN: Now I have another wire from De Gaspe Beaubien, of Montreal, which reads as follows:

> Am very much against inclusion of engineers under labour organization bargaining because would lower professional standard.

I have another wire from Henri Gaudefroy, Member Executive Committee, Montreal Branch, (EIC) 1430 St. Denis Street.

> Failing separate legislation for engineering profession only strongly urge bill 195 excluding profession be adopted.

Now I have a letter addressed to A. MacNamara, Esq. Deputy Minister, Department of Labour, Ottawa, Ontario. The letter is dated April 26, 1948, and it reads as follows:

> Dear Mr. MacNamara:
>
> I hope you will support the desire of the great majority of professional engineers that they be excluded from Bill 195 as presently written.
>
> Yours very truly,
> (sgd.) J. B. CHALLIES.

Mr. Case: Is that all of the engineers?

The Chairman: That is all of the engineers, but there is one here which refers to the treatment given to the chemical engineers in the Bill. It is from the Chemical Institute of Canada, and they would like to receive exactly the same consideration as the engineers, since they are so closely connected with them. And it refers particularly to the chemical engineers.

Mr. Adamson: They are engineers as well, of course.

The Chairman: They are engineers of course, and also members of the Chemical Institute of Canada, and they say that they feel they would be in a false position if chemists were included, while the engineers are excluded. This letter is pretty long and it is in French; but it advocates the exclusion of chemists to the same extent as engineers, in Bill 195; so I would place it on the record so that the members of the committee may have an opportunity of studying it.

(See Appendix).

Mr. Pouliot: Might we have a definition of "collective bargaining"? Some are for it and some are against it, so I think it would be a good thing for the record for us to know exactly what is meant by "collective bargaining".

The Chairman: Order, please. Before your question is in order, Mr. Pouliot —and I know you won't mind—I have just received another wire which is dated April 26, 1948, from Austin Wright and addressed to the Deputy Minister, Mr. Arthur MacNamara, and it reads as follows:

> Meetings of branches at Port Arthur and Winnipeg gives strong support to Engineering Institutes resolution re exclusion of engineers for collective bargaining legislation. Petitions and individual messages now in mail to you asking for exclusion. Many more on the way for points west of here. There is no doubt that west majority prefers exclusion.

Now, Mr. Pouliot, you have the floor.

Mr. Ross: You read a number of telegrams and I have a large number. Are you going to include those in Hamilton who are very much against your proposition, against the exclusion of the engineers?

Mr. Johnston: Are those all from engineers too?

Mr. Ross: Yes, those are all from engineers. These engineers work for plants and they come under the same category as employees of an organization. They are just the same as any other trade; and in a manufacturing plant such as Westinghouse, or Harvester, or the Steel Company—these people are not professional engineers in the way that that fellow was who said that he had been one thirty-five years ago, that he had worked as a professional engineer. These people are just working men, but they are engineers, so I think they should be given an opportunity, if these other people are going to be allowed, at least to submit briefs.

The CHAIRMAN: With respect to the first communication which I read from Mr. Dave Croll, he was invited to get in touch with Mr. Arthur Fleming, barrister of Toronto, who represents a certain number of engineers, who oppose the exclusion of the profession from collective bargaining.

I understand they have a brief now under consideration to support their stand; so it will be up to them to submit that brief as soon as it is ready, when we will have both sides of the medal.

Mr. ROSS: I would like to have this placed on the record as opposing.

Mr. ADAMSON: I have got a great number of documents of the same nature.

Hon. Mr. MITCHELL: Would not this be the best thing to do at this stage. I noticed one organization there; I think the people are employed in the category which Mr. Ross speaks of, and there is another organization represented of which I think Mr. Wright is the Secretary. I received a letter, myself, from Mr. Wright. I think he is the general secretary of the Professional Institute of Canada. So would it not be better to ask for written submission from both parties, for this committee. If every member is going to place his wires on the record—

Mr. POULIOT: I understand that the professional engineers did oppose collective bargaining. They are individualists.

Mr. GAUTHIER: That is right.

Mr. POULIOT: They want to be in a position to deal as they wish with their employers without being tied by anybody. There are rules and regulations of the Board, of the Association.

Mr. GILLIS: I would like to ask the Minister a question. The professional engineers were included, in the last bill which was before this committee. So why were they excluded from this one?

Hon. Mr. MITCHELL: They were excluded from this bill on the basis of representations made at that time. The National Association of the Professional Engineers, the Engineering Institute of Canada, and some of their official organizations, asked that they be excluded from the jurisdiction of the Act. They were national organizations.

Mr. SMITH: I have a lot of these telegrams, and so on, and I wrote to all of these people the same letter and said that I thought the object of the bill was to do for the various groups what the groups themselves wanted, and that unless the engineers could get together and find out just what they wanted, it seemed to me rather difficult to pass legislation. We are split right down the middle.

Mr. JOHNSTON: Mr. Smith has suggested that the National Association be asked to submit a brief. I agree with him there. In fact, that is the only way. You have got to take the larger associations; you cannot have each individual coming in here and presenting his case.

Mr. SINCLAIR: The point is this: That if you are organized nationally, then individually, the professional association as such, would be against inclusion. But the bulk of the engineers are those who work as employees rather than as consulting engineers, and it would be very difficult to present a brief for them; and I do not see how they could come forward on the one brief. It is only through collective representation such as this.

Mr. SMITH: In Ontario they said they represented a great many and that they had representatives throughout Canada. They said they were preparing a brief and I assumed that they would give us some figures and so on.

Mr. SINCLAIR: Were they for or against inclusion?

Mr. SMITH: They were for inclusion; and it is the national outfit which, as I understand it, is opposed to inclusion.

Mr. Lockhart: I have had some telegrams; some being for and some against. But I did as Mr. Smith did. I advised them, in my opinion, that whatever the main organization felt should be done that is the thing we are more interested in, rather than in individual representations by members of groups all over Canada.

Mr. Maybank: We could let the clause rest for a time.

The Chairman: Mr. Ross, are all the telegrams you have in your hands to the same effect?

Mr. Ross: Oh, yes; every one is against.

The Chairman: How many telegrams have you?

Mr. Ross: Twenty-four, and I also have some letters. Mr. Smith said that he wrote and told them about the same thing. But I have no address on any of mine. They are just signed by an individual, with no address.

Mr. Lockhart: That was my trouble too. Nine out of ten have no address.

The Chairman: Order, please.

Mr. Ross: I know of people who are engineers with an M.E. degree working in Westinghouse. They work in a plant; but it is different with engineers who go out and solicit business for themselves. But these men are spread around among the rest of the men in plants.

The Chairman: Perhaps Mr. Pouliot has something to say.

Mr. Pouliot: Oh, no, it is of no importance.

Mr. Archibald: The National Institute is opposed to entry or inclusion under the Act. Certain individuals are opposed to inclusion under the Act; but the organization wants to be brought under the Act. Is there another organization which wants to be brought in?

The Chairman: Yes.

Mr. Archibald: What is the name of it?

The Chairman: There are certain principal organizations, Mr. Archibald. Now, for your information, let me say that last week there was held in Ottawa a get-together of the professional engineers; and I am told that certain representatives of the national body, the Engineering Institute of Canada, have met with representatives of the other groups to try to compromise. I do not know what the result has been. But we are likely to read about it in the brief which we are told is under preparation just now.

Mr. Smith: Did you move something that we could refer to?

Hon. Mr. Mitchell: I move we defer any action of the definition of employee until we get the briefs from those organizations.

The Chairman: It is moved by the Hon. Mr. Mitchell that we defer any action on the definition of employee until we get the briefs from those two organizations. All those in favour?

Mr. Adamson: Just one question. What are the engineering organizations which wish to be included in collective bargaining?

Mr. Smith: One was the professional engineers of Ontario.

Mr. Adamson: They wish to be included?

Mr. Johnston: Yes; and there are some which wish to be excluded.

Mr. Adamson: A huge majority wish to be excluded.

Mr. Smith: How do we know that?

Mr. Ross: That is the question; the size of these two organizations.

Hon. Mr. MITCHELL: I get hundreds of telegrams a day, but I am not greatly interested in organized lobbies. I would rather hear representatives of the national organization who can speak with authority for the membership. I think that is all.

Mr. ROSS: I know of an engineer who works in a chemical company. He has no organization. He is just an individual and he wants to be included. How are we going to keep him out? Which is the bigger party, the ones who want in, or the ones who want out? I am in favour of the majority.

Hon. Mr. MITCHELL: That is what I am arguing.

Mr. ROSS: Where is the majority?

Mr. MAYBANK: Could we not back that majority?

Mr. POULIOT: The majority comes in as members of the C.I.O.

The CHAIRMAN: It is moved by the Hon. Mr. Mitchell that section 2, subsection (*i*) relating to the definition of employee, be allowed to stand for the time being. All those in favour? Those against, if any?

Carried.

Since there is no other correspondence or written matter before the committee I will call the bill section by section and I will read each section, after which discussion will be open.

Mr. MACINNIS: Mr. Chairman, before you do that, have we agreed to accept briefs that are not before us commenting on the Act? We have agreed to accept briefs that we have not yet seen. We will be dealing with the sections without having the viewpoint of these people.

Mr. SMITH: Mr. Chairman, I will go along with that. We have had a model bill submitted by the C.C.L. and it does seem to me if that is put on the record those other representations should be put on the record so that we shall be able to discuss them intelligently. When these people have submitted something we want to see it on the record.

Mr. POULIOT: Both sides.

Mr. JOHNSTON: I think that point is well taken.

The CHAIRMAN: Before we go any further may I say I had prepared by the clerk and circulated among the members an index of references sectoin by section with regard to last year's evidence, giving the page numbers and so forth. The basic principle of procedure in a committee like this is that the committee is all powerful and is master of its own procedure. Now, if we proceed clause by clause there is nothing to prevent a member at a later date moving for the reconsideratoin of any particular section where we have received such evidence in the way of a written submission which would warrant reconsideration of such a section, and we would be making headway and doing some constructive work. Had we not received such an amount of evidence last year the position would be different. Now, I am not taking any stand; I am just opening the discussion along that line.

Mr. SMITH: Mr. Chairman, perhaps I did not make myself clear. Let us take one point as an example. We have had submitted to us a model bill from the C.C.L. As yet, as I understand it, that has not become a part of the proceedings; and if we are going to record written representations—and we are—that is unanimous, I think—then we should have this in as a matter of record. It seems to me that is the proper way to give consideration to written representations. We did put one on the record a moment ago—from the Canadian Chamber of Commerce. I think before we proceed to make this examination we should also have these other submissions on the record so we can intelligently know from the submissions such new points as may have been raised. If we proceed now I think we shall be wasting time. Some of this has been sent to us in the ordinary mail.

Mr. Adamson: Can it be moved that the draft bill be incorporated in the record now? I move that the draft bill, suggested by the C.C.L., be incorporated in the record at this session.

Mr. Johnston: It will take some little time to get it into the record and sent to us; therefore, we should not continue with this bill that is before us until we get the record.

Hon. Mr. Mitchell: I am all for the greatest possible light on the submissions made by any organization irrespective of its affiliation, but this document was circularized to every member of the House of Commons, and there is this to be said in favour of it, that from an historical point of view—

Mr. McIvor: Mr. Chairman, on a point of order, may I say that it is very difficult for the reporter to make the record if the speakers address members at the other end of the table. I know there are important men at the other end of the table, but it is very difficult to hear at this end.

Hon. Mr. Mitchell: I think it is important to get historical information in the development of this legislation and to that end this submission by the Canadian Congress of Labour should be made part of the record.

Mr. Adamson: I so move.

Mr. Smith: I want you to include other submissions, put them all in; and then you will have a record that is worth while.

The Chairman: Mr. Adamson has moved that the draft labour code of the Canadian Congress of Labour be put in the minutes of evidence of today's meeting.

Mr. Ross: And all other submissions.

Mr. Smith: Other formal submissions.

The Chairman: If I am receiving a special motion on this, Mr. Smith, it is because this draft labour code is not being submitted at this morning's meeting; it was circularized a month or two ago. So it is agreed that any submission that will come to the meeting from now on will go into the record and be printed.

Mr. Smith: I think that should be moved. I think it should refer to organizations; we need not publish all the wires and letters that are received. I am suggesting that, although I am not insisting on it, that to preserve our record and make it of value we should take in these organizations.

The Chairman: Is the motion carried?

Carried.

Now, you will appreciate, gentlemen, that if you wish to have the minutes of proceedings and evidence of today in print and ready for the next meeting we may not be able to sit on the coming Thursday. Is it your desire to wait until the minutes have been printed before we hold another meeting?

Mr. Johnston: I think that is necessary.

Mr. MacInnis: Mr. Chairman, in view of the fact that we have received copies of the model bill of the Canadian Congress of Labour—at least it was sent to every member—it should not be necessary to have to wait until it appears in the minutes, because there would be nothing served by that procedure. We have that bill before us and if there is no other obstacle there is no reason why we should not go ahead and consider the clauses of this bill which has been sent to the committee—unless there is some other objection.

Mr. Adamson: The bill could be incorporated as an appendix later.

Mr. MacInnis: Yes.

The Chairman: I may add for your information also that in the letter which I have read from the Trades and Labour Congress there were a few references to certain materials. For instance, the report of the proceedings of the sixty-second annual convention of the Congress, and certain particular objects of that.

Mr. MacInnis: Two pages.

The Chairman: And the memorandum presented to the dominion government on March 4, 1948, also on collective agreements. Now, we have been offered as many copies of this reference as would be required by the members of the committee. Since you have discussed the printing of submissions would you feel that this should be printed too or are we to be satisfied with having the required number of copies distributed among the members?

Mr. Smith: I think that the written submission you have in your hands should be printed the same as the C.C.L. submission or that of the Canadian Chamber of Commerce, but I do not think because they refer to something that we should print the reference, as we will find that our record gives us a lead as to what they are talking about, and that would be sufficient and save a lot of printing. Because they might make reference to the second chapter of John and we would not want to print the whole Bible. It might be better than what we finally come out with, but still—

Mr. Adamson: Job would be better than John.

The Chairman: I brought this to the attention of the committee because the Trades and Labour Congress has sent me this reference accompanying the letter, as part of the letter, to avoid quoting from this.

Mr. Smith: I listened to you read the reference and I had no difficulty in understanding how to proceed. If one looks at page so-and-so he will find it. If we print the written submission that is all that is needed.

Mr. Archibald: That is all that is necessary.

The Chairman: Am I clear that you would be satisfied with receiving a copy of the reference for each of the members?

Agreed.

Mr. Smith: I want the letter printed; do not misunderstand me.

The Chairman: Yes, the letter will be printed. Now, what is your desire as to the time of our next meeting?

Mr. Adamson: I do not want to interrupt so much, but there is one further problem that we are going to have to face and that has to do with these submissions. If we leave it open for any organization or any group to submit material we may be snowed under with some irrelevant material. I submit that a committee should be set up with authority to decide on which submissions should be printed in the report and which should not. I think the committee must have that power within itself and we should not say that all submissions, irrespective of their relevancy should be printed.

The Chairman: Do you suggest that the steering committee should screen representations; use its own discretion?

Mr. Smith: Yes, we are all represented on that committee.

Mr. Adamson: I will make a motion that the steering committee should screen out the briefs submitted.

The Chairman: Is that motion carried?

Carried.

Now, gentlemen, I am not quite clear as to whether we should call our next meeting on Thursday or wait until the minutes of today's meeting are printed.

Mr. Johnston: We should wait until the minutes of today's meeting are printed.

Mr. Smith: I am going to make a motion that we meet on Thursday. We all have copies of this document in our offices and if we have not got it the clerk can call up the C.C.L. organization and get copies. So we will actually have it in front of us even though there might be a delay in the printing. I think we might proceed this morning. I spoke to Mr. Gillis and asked him if the model bill has objections and he said there were certain objections. So, let us meet on Thursday and bring our own copies, and the clerk can phone the C.C.L. office and they will give us all the copies we want.

Mr. MacInnis: I will support that suggestion.

The Chairman: The motion is that we meet on Thursday at the same place and at the same hour. Shall the motion carry?

Carried.

Hon. Mr. Mitchell: I do not want to delay proceedings, but do you not think we should put a time limit on the receiving of submissions; say that they must be received within a week or a day?

Mr. Smith: I think we should.

Mr. Johnston: Is that enough time?

Hon. Mr. Mitchell: I think they could be returned in twenty-four hours. Unless we are dealing with a specialized matter, I think that is all right.

Mr. Smith: Why not make it a week from Thursday?

Mr. Johnston: Yes, give them sufficient time, so that no one can say we are interfering with their presentations. I think a week from Thursday would be plenty of time.

Mr. Maybank: Does that refer to the engineers also?

Mr. Smith: Yes.

Mr. Maybank: I think it is time enough for them, but I thought, probably, you would want to make sure that they had time.

Mr. Smith: I think the clerk should wire them today.

Mr. Maybank: If there is any difficulty that could be considered.

Mr. MacInnis: I served on one committee with our chairman and I found him very reasonable. I wonder if we could leave it in this way, that he could report at the next meeting that because of certain circumstances a little more time was required for an organization and that we extend the time; leave it open.

Mr. Smith: We will not have any technical problems here, surely.

The Chairman: Is there any other business? If not, we will adjourn until next Thursday.

The committee adjourned to meet again on Thursday, April 29, 1948, at 10.30 a.m.

APPENDIX "A"

THE CANADIAN CHAMBER OF COMMERCE
Board of Trade Building
Montreal 1.

April 12, 1948.

Chairman,
Standing Committee on Industrial Relations,
House of Commons,
Ottawa, Ontario.

Re: Bill No. 195, An Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes.

Dear Sir:—The Executive Committee of the Canadian Chamber of Commerce note that Bill No. 195, an Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes, was given first reading in the House of Commons on April 6th, 1948, and on second reading was referred to the Standing Committee on Industrial Relations on April 8th. The importance of this legislation is such that the Executive Committee feel it incumbent on them to make representations to you regarding certain amendments which they believe could be made in the Bill.

The remarks set out hereunder may be divided in two categories—

I. those commenting on substantive portions of the Bill.
II. those commenting on the type and powers of the administration set up in the Bill.

The principal points covered may be summarised as follows:

I. *Those commenting on substantive portions of the Bill*

1. The persons covered by the Bill should be more clearly defined.
2. Right of employers and employees to abstain from joining an association or a union respectively, should be recognized.
3. An addition is recommended to the list of unfair labour practices.
4. Registration of unions is recommended.
5. Where a bargaining agent has been certified but no agreement is in force, provision should be made for employers to make changes in terms or conditions of employment.
6. Further limitations are recommended regarding strikes.
7. It is recommended that sub-section 32(8) prohibiting a lawyer from representing parties before a Conciliation Board be deleted.
8. It is recommended that the privileges and protection of the Act be denied to organizations led or dominated by subversive elements.

II. *Those commenting on administrative portions of the Bill*

9. Certain changes in the powers of the Minister are recommended.
10. Certain safeguards are recommended regarding operation of the Canada Labour Relations Board.

Before commenting on specific sections of the Bill, we wish to state our belief that good labour relations can only be maintained when there is a proper balance between the rights and responsibilities of labour on the one hand and those of management on the other. War-time labour legislation in Canada provided many privileges for labour without at the same time imposing on trade unions and employees responsibilities commensurate with such power and privileges. The present Bill is perpetuating this lack of balance between the rights and responsibilities of employer and employee. While this may have been expedient in war-time, it cannot be maintained permanently if orderly conduct of labour relations is to be continued.

I. Therefore with the thought in mind that such balance should be restored, we would respectfully submit that the following changes should be made in the substantive portions of the Bill.

1. *Employees covered by the Bill—Section 2(1) (i)*—The definition of employees who are covered by the Bill should be reworded so as to more clearly exclude the following:

(i) a manager, superintendent, supervisor, or any other person who, in the opinion of the Board, exercises management functions or is employed in a confidential capacity.

(The Bill as introduced does not clearly exclude foremen from its operation although its wording would leave doubt as to whether foremen were intended to be covered. It is clear that foremen who exercise the function of management should be excluded. The problem is one of nomenclature and we have sought to overcome it by using the word supervisor. This word might be defined as one who directs or assists in directing the work of others or who, with or without such duties, has the authority to do any one of the following: hire, discharge, promote, demote or discipline employees or effectively recommend such action.)

(ii) persons employed in domestic service or in agriculture. It is realized that in view of Section 53 of the Bill the question of domestic servants and employees in agriculture will not come up under the Bill. However, in view of Sections 62 and 63 of the Bill dealing with its adoption by the provinces it was felt this matter could well be covered in the Bill.

2. *Freedom of Association—Sections 3 and 6(1)*—Section 3 recognizes formally the right of employees to belong to a trade union and of employers to belong to an employer's organization. While we have always endorsed this position, we believe that the section should also recognize expressly the right of employees and employers to abstain from joining a trade union or employers' organization, respectively. The section would then express accurately what we understand by the principle of freedom of association. In order to conform to this change, Section 6(1) should be deleted.

Similarly, there is nothing in the Bill to prevent an employer and a trade union from inserting in a collective agreement a provision requiring the employer to make deductions from his employees wages without their consent and to pay such sums as dues to a specified trade union. No such provision in a collective agreement should be valid with respect to any employee unless authorization of deduction is secured, in writing from the employee.

3. *Unfair Labour Practices—Section 4*—Sub-section 4(3), among other things, prohibits "intimidation or coercion to compel an employee to become or refrain from becoming or to cease to be a member of a trade union." This does not safeguard the right of an employee or an employer to enter his place of business and therefore the Bill should be amended to prohibit intimidation or coercion to prevent any employee or any other person from entering an employer's premises where he has a lawful right to go, or from leaving such premises.

4. *Registration of Unions—Section 52(2)*—Bill No. 195 provides that the Board *may* require unions to file a statutory declaration when applying for certification. It is suggested that it should be made mandatory, as

a condition of certification as a bargaining agent, that a union register with the Department of Labour and file a financial statement, list of its principal officers, initiation and other dues, and copy of its by-laws in a public office. Further, unions should be required to submit annual reports to their members.

5. *Right of Employer to change Conditions of Employment—Sections 14(b) and 15(b)*—Sub-section 14(b) provides that where the first agreement is being negotiated with a certified bargaining agent an employer shall not decrease wage rates or alter any other term or condition of employment without consent of or on behalf of employees affected. Similarly 15(*b*) provides that where a collective agreement has expired and a new agreement is being negotiated the employer shall not decrease wage rates nor change any other term or condition of employment without the consent of employees affected. In other words an employer's right to take such steps as he deems necessary to protect his own business are made subject to consent of his employees.

These provisions appear to place unwarranted and dangerous restrictions upon the rights and responsibilities of the employer with respect to the management and financial control of his business. Such a restriction would in certain circumstances compel an employer, especially a small employer with limited resources, to suspend or discontinue operations in his establishment during negotiations in order to protect the business against substantial losses which would be incurred if he continued operations. The employer would be entirely within his rights to suspend or discontinue operations in these circumstances under the provisions of Section 25 of the Bill. This would force unnecessary loss of employment and hardship upon the employees affected and unnecessary interruption to the employer's business.

The essence of collective bargaining is that the employer and employee agree to be bound by the terms of the agreement for the life of such agreement. To extend the life of such agreements artificially as long as negotiations are under way seems an unreasonable burden to place on employers, and places the decision for change in the hands of labour rather than management. Similarly to restrict the employer's right to change while a first agreement is being negotiated cannot be justified. We strongly urge that Sub-Section 14(b) and 15(b) together with Section 39 be deleted from the Bill.

6. *Strikes—Sections 21, 22 and 25*—Under Sections 21 and 22 a trade union can take a strike vote if its members and call a strike of all employees affected without submitting the employer's last offer of terms or conditions of employment to all the employees affected. These sections should be amended to provide that, following the other steps already provided for therein, no trade union shall take a strike vote or declare or authorize a strike of employees affected and that no employee shall strike until the employer's last offer of terms or conditions of the employment has been submitted to all the employees affected for their acceptance or rejection through a secret ballot under the supervision of a conciliation officer appointed by the Minister.

The principle underlying this proposal is that trade union executives and bargaining representatives have authority to act only as agents of employees. Such authority should not extend to the right to reject the employer's final offer of settlement nor to the calling of a strike.

Bill No. 195—as compared to previous Bill No. 338—reduces the length of time which must elapse from the date on which the report of the Conciliation Board is received by the Minister and strike or lockout action is taken, from fourteen days to seven days (Section 21(*b*) and Section 22(*b*)). This allows insufficient time for the report to be transmitted to the parties concerned and for a final settlement to be negotiated between them or for a vote of the employees affected to be taken as recommended above before strike or lockout action is taken. It is recommended that at least fourteen day shall elapse after receipt by both parties to the dispute of the report of the Conciliation Board and the employer's last offer has been submitted to all the employees affected through a secret ballot as suggested.

In the interests of clarity it is recommended that Section 25 be amended to read "Nothing in this Act shall be interpreted as prohibiting an employer from suspending or discontinuing operations in that employer's establishment, in whole or in part, not constituting a lockout."

7. *Representation before a Conciliation Board—Section 32(8)*—Section 32(8) which limits the rights of party appearing before a Conciliation Board to be represented by counsel should be deleted from the Bill.

II. The necessity of maintaining adequate legal checks on the ever widening power of administrative boards and officers through which our country is now largely governed, is a matter of great concern. In several respects the Bill leaves much to be desired in this regard and we would therefore draw your attention to the following:

8. *Powers of Minister—Sections 46(1) and 56(1)*—Section 46(1) provides that no prosecution for an offence under the Bill may be taken without the consent of the Minister, while Section 56(1) provides in part that the Minister "may do such things as seem calculated to maintain or secure industrial peace and to promote conditions favourable to settlement of disputes."

The inclusion of both these clauses appears to us an admission that the Bill as framed is not adequate in itself. Certain procedures for orderly negotiations, conciliation, etc., are set up but it is still felt necessary to allow almost unrestricted power to the Minister to take other steps on his own initiative. Again certain sanctions are established for contravention of the Bill but it is still necessary to make such sanctions subject to ministerial veto. Surely if the Act is reasonably satisfactory as a code for labour relations, there is no need to buttress it with further sections providing for ministerial control. We would suggest therefore that Section 56(1) be either completely deleted or its scope more clearly defined, and that Section 46 be amended so that prosecution may be made with consent of the Board rather than that of the Minister.

9. *Canada Labour Relations Board—Sections 58 to 61*—While we realize the new Canada Labour Relations Board cannot and should not be bound by all the formal rules of evidence or procedure which apply in a court of law, there are certain fundamental rules of justice which we feel should be stated in the sections establishing the Board and outlining its powers. These would not only assure the interested parties the protection they should have, but would also go far to establish the reputation of the Board as an impartial tribunal in the administration of the Act.

The specific recommendations we make are as follows:

1. amendment of Section 58(6) at least to the extent of limiting the evidence that may be required to relevant evidence.
2. a provision requiring the proposed Board to give interested parties an opportunity to be present while others are giving evidence or making representations and to hear them in rebuttal.

3. the situations in which the proposed Board may delegate authority under Section 59 should be defined restrictively or the section should be deleted.
4. written reasons should be given by the proposed Board for its decisions and it should be compulsory to publish such decisions and reasons, for the information of the public. The same recommendation as to compulsory publication is made with respect to reports of the proposed Conciliation Boards.
5. a provision for an appeal from the decisions of the proposed Board to the Exchequer Courts of Canada, on points of laws.

It is appreciated that it is probably the intention to cover the above points in Rules of the Board under Section 60 or in Regulations of the Governor in Council under Section 67, but they appear to be of such fundamental importance that they might well be contained in the Bill itself.

10. *Application of the Act—Sections 53, 54 and 55*—The Executive Committee of the Canadian Chamber of Commerce believes that the privileges and protection of the Act should not be extended to any organization which, in the opinion of the Board, is led or dominated by communists, communist sympathizers, or members or supporters of any organization that believes in or teaches overthrow of the government by force or unconstitutional means.

In this Brief we have earnestly endeavoured to point out improvements to this Bill in order to make it a workable piece of legislation which will help to remove industrial unrest from Canada. In the interests of labour, management and the public, we urge that the various points mentioned herein be given serious consideration by you and your Committee and that the Bill be amended accordingly.

Yours very truly,

H. GREVILLE SMITH,
Chairman of the Executive.

D. L. MORRELL,
Executive Secretary.

ANNEX TO BRIEF

CANADIAN CHAMBER OF COMMERCE

Certain Details and Arguments Supporting Brief on Bill No. 195
submitted by the Executive Committee of The
Canadian Chamber of Commerce

Item 1—Employees Covered by the Bill

The Brief suggests redrafting Section 2 (1) (i) so as to exclude those occupying supervisory positions, and those employed in domestic service or agriculture. The importance of having the employees who are covered by the proposed legislation clearly defined is too great to require further comment. As the scope of the Bill is industrial in character, it was decided this should be more clearly brought out by excluding those employed in domestic service and in agriculture.

Item 2—Freedom of Association

The Bill as presented specifically establishes an employee's right to join an association. The suggestion of the Chamber's Executive Committee is that with this right should go the corresponding right to refuse to join without suffering any economic penalty. The effect of the suggestion is that it will be illegal for an employer and bargaining agent to agree to any form of security clause which does not give the employee the freedom of withdrawing at any time from the association if he so desires or of refusing to join if he is not a member of the association, without affecting his position as an employee.

Item 3—Unfair Labour Practices

The change suggested by the Chamber's Executive Committe prohibits mass picketing. The thought behind this suggestion is that, while mass picketing is admittedly an indictable offence under the criminal code, the section of the code does not appear to be widely understood and certainly has been little used. Bill No. 195 is a Dominion code on labour relations and therefore mass picketing should appear as an unfair labour practice. Section 4 (3) establishes specific protection against intimidation or coercion to become or refrain from becoming a union member. It is equally important that an individual be protected in his right of access to or egress from his place of work.

Item 4—Registration of Unions—Section 52 (2)

In this connection it is pointed out that public companies are required by law to make an annual report on their affairs. Such provisions of course are for the protection of members of the company and of the general public. For precisely the same reasons unions should be required to report annually in writing to their members. Actually there should be no union objections to these provisions as any union which is legitimately pursuing its lawful objects could suffer no harm from such report but rather should gain in prestige.

Item 5—Right of Employer to Change Conditions of Employment—

Sections 14 (b) and 15 (b)

While provisions similar to Sections 14 (*b*) and 15 (*b*) were included in the old Industrial Disputes Investigations Act in effect before the war, and which the new act replaces, the old act only applied to a limited group of industries subject to federal jurisdiction, mostly large industries of a public utility character. The new Act may, by Sections 62 and 63, be applied to any province which adopts it, in which case it will apply to industries of all kinds, large and small, and such provisions as Section 14 (*b*) and 15 (*b*) are considered to be induly restrictive under these altered conditions.

Item 6—Strikes

The effect of the Chamber's Executive Committee's recommendations on the subject of strikes is that before a strike vote is held the employer's final offer of settlement would be submitted to a vote of all employees affected and such vote will be by secret ballot under government supervision.

The addition of a section requiring the submission of an employer's final offer to employees affected for a vote thereon, before taking a strike vote, means that negotiating committees will have to express the views of employees much more closely than if they can call an immediate strike vote, and assures the employer of the fact that the employees are fully acquainted with his final offer. The necessity for a secret ballot on the final offer is so obvious a means to avoid intimidation and coercion that it is difficult, when such vote is held under supervision of a conciliation officer appointed by the Minister, to foresee valid objections to this method unless union leaders will admit they are not endeavouring to represent employees' wishes.

Item 7—Representation by Counsel

The purpose of Section 31(8) in limiting both an employer's and a union's right to be represented by Counsel before a Board of Conciliation is not too clear. The right to be represented by someone you feel qualified to present your case adequately is one which, it is felt, should not be taken away. This particular section would, of course, be most onerous on small employers and small locals, but the principle underlying the sub-section is unsound and the sub-section should be deleted.

Item 8—Powers of the Minister

The Chamber would suggest the following:

(a) Section 46(1) should be amended so that prosecution may be made with consent of the Board rather than that of the Minister.

(b) Section 56(1) should be deleted or qualified by limiting the powers of the Minister to a considerable degree.

In connection with these changes, comment is made as follows:

A. The existence of a law without adequate sanctions for enforcing same has most undesirable social consequences. It would therefore be preferable to have an unrestricted right to prosecute for offences as the existence of the Minister's veto on such prosecutions could make the sanction sections of the act meaningless. Further the continuance of the Minister's power in this regard might give rise to a feeling that the Bill was being enforced unevenly which would lead to disrespect of the entire Bill.

B. If Section 56(1) is to be taken at its face value, it gives the Minister almost unlimited power. If it was inserted in the Bill for some specific purpose, the purpose should be stated and the section limited to its actual purpose. This section as it now appears in the Bill may have been justified under war-time conditions but its retention as a permanent feature of Canadian legislation does not appear to be justified.

Item 9—Canada Labour Relations Board

The specific recommendations of the Chamber's Executive Committee are set out in detail in their Brief, however, the following additional comment is made in connection therewith:

A. It is felt that much criticism of the Board can be avoided if written reasons are given by the proposed Board for its decisions and that such decisions be published for the information of the public.

B. It is felt that the Board should act along certain clearly defined lines. Thus we have suggested that the Board should be entitled to receive only relevant evidence, should not have an unlimited power to delegate its powers and duties, and should, in questions of law, be subject to correction by the Exchequer Court.

APPENDIX "B"

(Original in French. The following is a translated version)

THE CHEMICAL INSTITUTE OF CANADA

MONTREAL, 26th April, 1948.

Mr. P. E. CÔTÉ, M.P.,
Chairman of the Committee on Industrial Relations,
House of Commons,
Ottawa, Ont.

DEAR SIR,—I venture to write you in your capacity of parliamentary assistant to the Minister of Labour and Chairman of the Committee on Industrial Relations to acquaint you with the wishes of the Chemical Institute of Canada respecting the provisions of Bill 195 which is presently under study in the Commons.

The Chemical Institute of Canada, incorporated in 1921, is an association of chemists the great majority of whom are what we call professional members. To be eligible for professional membership in the Institute a person must possess a diploma in chemistry or in chemical engineering from a university whose courses and diplomas are approved by the Institute and count in addition at least two years' experience in the active practice of chemistry and chemical engineering. The present strength of the Institute comprises about 3,000 members of whom more than 2,500 are professional members and 850 students who are fitting themselves for the practice of chemistry or chemical engineering. The other members of the Institute are "associate" members, who while they do not hold university diplomas, are also engaged in the active practice of chemistry.

The professional interests of the members of the Institute are handled by the Committee on professional affairs to which belong all the professional members of the Institute's Council; "associate" members having no voice in the study and solution of professional problems.

This preamble was necessary in order to acquaint you with the position of the Chemical Institute of Canada in comparison with Canada's other professional associations, such as the Engineering Institute and the Canadian Institute of Mining and Metallurgy which are interested, like our Institute, in Bill 195.

For several years, in fact even before the publication of Order in Council 1003 which was made operative during the war, the Chemical Institute of Canada took a clear-cut stand on the question of collective agreements. The members of the Institute are not opposed to collective agreements but they do not want to be compelled to negotiate through the medium or instrumentality of a trade union.

We find in Part I, section 2, sub-section i of Bill 195 that the definition of employee does not include the members of the following professions: medicine, dental surgery, architecture and engineering, who have a right to practise under the laws of a province and are employed in that capacity.

I wish to submit to you that the chemists and chemical engineers, having the same professional qualifications as the engineers, should also be excluded from the definition of an employee by the terms and for the purposes of the bill in question. If engineers are excluded, there exists no reason why chemists and chemical engineers are not excluded likewise. Their non-exclusion would create manifold difficulties for the members of our profession.

1.—In fact, chemical engineers, by reason of the fact they practise one branch of engineering, would be excluded from collective agreements whereas their chemist associates would not be so.

2.—There is in the Province of Quebec an Association of professional chemists of Quebec which has the power to regulate the practice of the profession but which presently does not yet exercise that right. In Canada's other provinces, the privilege of becoming members of professional associations of engineers is now open to chemists. Those who would avail themselves of such a privilege would be in a false position. They would belong to an association the members of which would be excluded from the definition of an employee whereas they themselves would not be excluded therefrom in the capacity of chemists.

3.—Outside of Quebec, there are no professional associations of chemists, and that is the reason why the Chemical Institute of Canada, representing the great majority of Canadian chemists, demands on their behalf the same treatment which the bill vouchsafes to other professions. However, we foresee the formation of provincial professional associations of chemists and chemical engineers in the future. As the proposed legislation is no doubt destined for a long life, this contingency will have to be provided for.

4.—The application of this act will be limited in scope to certain very specialized industries which, generally speaking, employ few chemists. But those which they do employ, by reason of their small number, would be liable to be compelled to have themselves represented, in negotiations, by trade unions, something which runs counter to the professional ideal.

For all these reasons, the Chemical Institute of Canada hopes that the government will consent to amend the definition of the employee in such a manner that it will not include chemists and chemical engineers, in the same capacity as engineers and architects. The professional status of chemists is as obvious as that of architects and engineers.

To this end, the Committee on professional affairs of the Council of the Chemical Institute of Chemistry adopted at its regular meeting, in December, 1947, a resolution to the effect that chemists and chemical engineers be not included in the definition of employee for the purposes of Bill 338.

We further propose that, if there is a disposition to extend to the various professions the privilege of signing collective agreements with the employers, it shall be clearly understood that the groups in question must not include employees of a professional persuasion under the aegis of professional associations of engineers, of chemists or of architects.

We believe that this course of action will commend itself to the great majority of professional chemists and that it will also receive the support of a small minority which, failing a special act respecting collective agreements for professional employees, is ready to make the best of the provisions of the present bill just as it reluctantly made the best of the provisions of P.C. 1003 during the war.

The Chemical Institute of Canada intends associating itself in this manner with the formulation of a national labour code which will serve as a model for provincial governments wishing to regulate in the interests of all relations between employees and their employers. There is perhaps some point in repeating here that the interests of professional employees do not fit into the same pattern as those of other employees of industry. These employees contribute to the very creation of industry and to its expansion. Their number is comparatively limited yet they made a tremendous contribution to Canada's progress. It would be regrettable if they were compelled to resort to methods which, if they are effective for the workers whose power stems from their number, are incompatible with the ideal of a professional to whom it is repugnant to go on strike and even to engage in the negotiations and the bargaining processes required by the bill. If, unfortunately, professionals were compelled to join trade unions in order to assert their rights, the freedom and the efficacy of their work could not fail to suffer thereby.

I am sure you will take into proper consideration the foregoing notes and that you will study them in the spirit that dictated them, that of contributing to the formulation of a national labour code that will satisfy all the interested parties while respecting the rights of each. I have written you on the suggestion of Mr. Raymond Eudes, M.P., to whom I am forwarding a copy of this letter. Acting on the suggestion of the deputy minister, Mr. McNamara, the Chemical Institute of Canada will also present a similar request in English, at the same time as other professional associations interested in the success of this undertaking.

I remain, Mr. Chairman,

Yours very truly,

LÉON LORTIE,
Chairman of the Board of Directors,
The Chemical Institute of Canada.

APPENDIX "B"

THE CHEMICAL INSTITUTE OF CANADA

MONTRÉAL, le 26 avril 1948.

M. P.-E. Côté, M.P.,
Président du Comité des relations industrielles,
Chambre des communes,
Ottawa, Ont.

Cher monsieur,—Je me permets de vous écrire en votre qualité d'Assistant-parlementaire du ministre du Travail et de président du Comité des relations industrielles pour vous faire part du désir de l'Institut de chimie du Canada en ce qui a trait aux dispositions du bill 195 dont l'étude se poursuit actuellement aux Communes.

L'Institut de chimie du Canada, incorporé en 1921, est une association de chimistes dont la grande majorité sont ce que l'on appelle des membres professionnels. Pour être membre professionnel de l'Institut il faut posséder un diplôme en chimie ou en génie chimique d'une université dont les cours et les diplômes sont approuvés par l'Institut, et avoir de plus une expérience de deux ans au moins dans la pratique active de la chimie ou du génie chimique dans une industrie ou un laboratoire reconnus par l'Institut. Les effectifs actuels de l'Institut comptent environ 3,600 membres dont plus de 2,500 sont des membres professionnels et 850 sont des étudiants qui se préparent à la pratique de la chimie ou du génie chimique. Les autres membres de l'Institut sont des membres "associés" qui, sans posséder de titres universitaires, sont aussi dans la pratique active de la chimie.

Les intérêts professionnels des membres de l'Institut sont entre les mains du Comité des affaires professionnelles dont font partie tous les membres professionnels du conseil de l'Institut; les membres "associés" n'ayant aucune voix au chapitre dans l'étude et la solution des problèmes professionnels.

Ce préambule était nécessaire pour vous faire comprendre la position de l'Institut de chimie du Canada en regard des autres associations professionnelles du Canada, telles que l'*Engineering Institute* et le *Canadian Institute of Mining and Metallurgy* qui s'intéressent, comme notre Institut, au bill 195.

Depuis plusieurs années, en fait depuis avant même la promulgation de l'ordre en conseil 1003 qui fut mis en force durant la guerre, l'Institut de chimie du Canada prit une position bien nette sur la question des conventions collectives. Les membres de l'Institut ne sont pas opposés aux conventions collectives mais ils ne veulent pas être forcés de négocier par l'entremise ou l'intermédiaire d'une union ouvrière (*trade union*).

Dans le bill 195, 1ère partie, article 2, paragraphe i, nous trouvons que la définition de l'employé n'inclut pas les membres des professions suivantes: médecine, chirurgie dentaire, architecture et génie, qui ont le droit de pratiquer en vertu des lois d'une province et employés comme tels.

Je désire vous soumettre que les chimistes et les ingénieurs-chimistes, possédant les mêmes titres professionnels que les ingénieurs, devraient aussi être exclus de la définition d'un employé aux termes et aux fins du projet de loi en question. Si les ingénieurs sont exclus, il n'existe pas de raison pour que les chimistes et les ingénieurs-chimistes ne le soient pas. S'ils ne l'étaient pas, cela créerait de multiples embarras pour les membres de notre profession.

1. En effet, les ingénieurs-chimistes, parce qu'ils pratiquent une branche de l'art de l'ingénieur, seraient exclus des conventions collectives alors que leurs collègues chimistes ne le seraient pas.

2. Dans la province de Québec, il existe une association des chimistes professionnels de Québec qui possède le pouvoir de règlementer la pratique de la profession mais qui, actuellement, n'exerce pas encore ce droit. Dans les autres provinces du Canada, on offre maintenant aux chimistes le privilège de faire partie des associations professionnelles d'ingénieurs. Ceux qui s'en prévaudraient seraient dans une fausse situation. Ils appartiendraient à une association dont les membres seraient exclus de la définition d'un employé alors qu'eux-mêmes n'en seraient pas exclus en tant que chimistes.

3. Il n'existe pas d'associations professionnelles de chimistes, sauf dans le Québec, et c'est pour cette raison que l'Institut de chimie du Canada, représentant la grande majorité des chimistes canadiens, réclame en leur nom un traitement que le projet de loi accorde à d'autres professions. Dans l'avenir, toutefois, nous prévoyons la formation d'associations professionnelles provinciales de chimistes et d'ingénieurs-chimistes. Comme la loi proposée aura sans doute une longue carrière, il faudra pourvoir à cette éventualité.

4. Le champ d'aplication de cette loi sera limité à certaines industries bien spécifiées qui, en général, emploient peu de chimistes. Mais ceux qu'elles emploient, en raison de leur petit nombre, seraient exposés à être forcés de se faire représenter, dans les négociations, par des unions ouvrières, ce à quoi l'idéal professionnel est opposé.

Pour toutes ces raisons, l'Institut de chimie du Canada espère que le gouvernement voudra bien amender la définition de l'employé de façon qu'elle n'inclue pas les chimistes et les ingénieurs-chimistes, au même titre que les ingénieurs et les architectes. Le statut professionnel des chimistes est aussi évident que celui des architectes et des ingénieurs.

A cette fin, le Comité des Affaires professionnelles du Conseil de l'institut de chimie du Canada a adopté, lors de sa réunion régulière de décembre 1947, une résolution à l'effet que les chimistes et ingénieurs-chimistes ne soient pas inclus dans la définition d'employé aux fins du bill 338.

Nous proposons en outre que, si on désire étendre aux diverses professions le privilège de signer des conventions collectives avec les employeurs, il soit bien entendu que les groupes en question ne devront comprendre que des employés de caractère professionnel sous l'égide des associations professionnelles d'ingénieurs, de chimistes ou d'architectes.

Nous croyons que cette façon de procéder satisfera la très grande majorité des chimistes professionnels et qu'elle recevra aussi l'appui d'une faible minorité qui, à défaut d'une loi spéciale concernant les conventions collectives pour employés professionnels, est prête à se contenter des dispositions du présent projet de loi comme elle s'est accommodée, à regret, des provisions du P.C.1003 durant la guerre.

L'Institut de chimie du Canada entend collaborer de cette façon à l'élaboration d'un code national du travail qui servira de modèle aux gouvernements provinciaux désireux de règlementer dans l'intérêt de tous, les relations entre les employeurs et leurs employés. Il n'est peut-être pas inutile de redire ici que les intérêts des employés professionnels ne sont pas du même ordre que ceux des autres employés de l'industrie. Ces employés collaborent à la création même et à l'expansion de l'industrie. Leur nombre est relativement restreint mais leur contribution au progrès du Canada est immense. Il serait regrettable si on les forçait à recourir à des méthodes qui, si elles sont efficaces pour les ouvriers dont la puissance provient de leur nombre, ne sont pas compatibles avec l'idéal d'un professionnel qui répugne à faire la grève et même à entreprendre les négociations et les marchandages requis par le projet de loi. Si, par malheur, des professionnels étaient forcés de se joindre aux unions ouvrières pour revendiquer leurs droits, la liberté et l'efficacité de leur travail ne sauraient qu'en souffrir.

Je suis sûr que vous prendrez en bonne considération les notes qui précèdent et que vous les étudierez dans l'esprit qui les a dictées, celui de contribuer à l'élaboration d'un code national du travail qui satisfasse tous les intéressés en respectant les droits de chacun. Je vous ai écrit à la suggestion de votre collègue, monsieur Raymond Eudes, M.P., à qui j'envoie copie de cette lettre. A la suggestion du sous-ministre, M. McNamara, l'Institut de chimie du Canada présentera aussi une semblable demande en anglais, en même temps que d'autres associations professionnelles intéressées au succès de cette entreprise.

Je vous prie d'agréer, monsieur le président, l'expression de mes sentiments distingués.

LÉON LORTIE,
Président du Conseil
d'Administration,
Institut de chimie du Canada.

APPENDIX "C"

A NATIONAL LABOUR CODE

PROPOSED BY THE CANADIAN CONGRESS OF LABOUR FEBRUARY, 1948

AN ACT TO PROVIDE FOR THE INVESTIGATION, CONCILIATION AND SETTLEMENT OF INDUSTRIAL DISPUTES

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

1. This Act may be cited as The Industrial Relations and Disputes Investigation Act, 1948.

INTERPRETATION

2. (1) In this Act, unless the context otherwise requires,

(*a*) "bargaining agent" means a trade union that acts on behalf of employees
  (i) in collective bargaining; or
  (ii) as a party to a collective agreement with their employer;

(*b*) "Board" means the Canada Labour Relations Board;

(*c*) "certified bargaining agent" means a bargaining agent that has been certified under this Act and the certification of which has not been revoked;

(*d*) "check-off" means the deduction by an employer of union fees, dues, fines, or assessments, or the deduction of any combination of fees, dues, fines and assessments, from the employee's wages or other remuneration and the payment of the sums so deducted to the union or its authorized representative; and "to check off" shall have a corresponding meaning;

(*e*) "collective agreement" means an agreement in writing between an employer or a group of employers, or an employers' organization acting on behalf of an employer, on the one hand, and a bargaining agent of his employees, on behalf of the employees, on the other hand, containing terms or conditions of employment of employees, with reference to any matter pertaining to rates of pay, hours of work, the check-off or union security;

(*f*) "collective bargaining" means negotiating in good faith with a view to the conclusion of a collective agreement or the renewal or revision thereof, as the case may be; the embodiment in writing of the terms of agreement arrived at in negotiations or required to be inserted in a collective agreement by this Act; the execution by or on behalf of the parties of such written agreement; and the negotiating from time to time for settlement of disputes and grievances of employees covered by the agreement and "bargaining collectively" and "bargain collectively" have corresponding meanings;

(*g*) "Conciliation Board" means a Board of Conciliation and Investigation appointed by the Minister in accordance with section twenty-two of this Act;

(*h*) "Conciliation Officer" means a person whose duties include the conciliation of disputes and who is under the control and direction of the Minister;

(*i*) "dispute" or "industrial dispute" or "trade dispute" means any dispute or difference or apprehended dispute or difference between an employer and one or more of his employees or a bargaining agent acting on behalf of his employees, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done by him or by the employee or employees or as to privileges, rights and duties of the employer or the employee or employees; and without limiting the generality of the foregoing, includes any dispute or difference relating to

- (i) wages, allowances or other remuneration of employees or the price paid or to be paid in respect of services, hours of work, vacations with pay, statutory holidays, pensions, retirement benefits, or sickness benefits;
- (ii) sex, age, qualication or status of employees;
- (iii) employment of children or any person or persons or class of persons, or the dismissal of or refusal to employ any particular person or persons or class of persons;
- (iv) claims on the part of an employer or any employee as to whether and, if so, under what circumstances preference of employment should or should not be given to one class of persons over another;
- (v) the subject of check-off;
- (vi) union security;
- (vii) the interpretation of an agreement or a clause thereof; and
- (viii) any established custom or usage;

(*j*) "employee" means a person employed to do skilled or unskilled manual, clerical, or technical work, and includes any person on strike or locked out in a current industrial dispute who has not secured permanent employment elsewhere, but does not include

- (i) a manager or superintendent, or any person who, in the opinion of the Board, is employed in a confidential capacity in matters relating to labour relations;
- (ii) a member of the medical, dental, architectural or legal profession qualified to practice under the laws of a province and employed in that capacity;

(*k*) "employer means any person who employs one or more employees, and includes His Majesty in right of Canada;

(*l*) "employer's agent" means:

- (i) any person or association acting on behalf of an employer;
- (ii) any officer, official, foreman or other representative or employee of an employer acting in any way on behalf of an employer in respect to hiring or discharging or any of the terms or conditions of employment of the employees of such employer;

(*m*) "employers' organization" means an organization of employers which has among its purposes the regulation of relations between employers and employees;

(*n*) "employer-dominated organization" means any association, committee or group of employees or any other entity purporting to bargain collectively on behalf of any employees, the formation or organization of which association, committee, group or other entity, has been or is being aided or abetted by an employer, or an agent of an employer, or the administration, management or policy of which has been or is being influenced, cœrced, or controlled by an employer or an agent of an employer;

(*o*) "lockout" includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of his employees, done to compel his employees, or to aid another employer to compel his employees, to agree to terms or conditions of employment;

(*p*) "Minister" means the Minister of Labour;

(*q*) "parties with reference to the appointment of, or proceedings before, a Conciliation Board means the parties who are engaged in the collective bargaining or the dispute in respect of which the Conciliation Board is or is not to be established;

(*r*) "regulation" means a regulation of the Governor in Council under this Act;

(*s*) "strike" includes a cessation of work, or refusal to work or to continue to work, by employees, in combination or in concert or in accordance with a common understanding, for the purpose of compelling their employer to agree to terms or conditions of employment or to aid other employees in compelling their employer to agree to terms or conditions of employment;

(*t*) "to strike" includes to cease work, or to refuse to work or to continue to work, in combination or in concert or in accordance with a common understanding, for the purpose of compelling the employer of the employees who so cease, or refuse, to agree to terms or conditions of employment or to aid other employees in compelling their employer to agree to terms or conditions of employment;

(*u*) "trade union" or "union" means any organization of employees formed for the purpose of regulating relations between employers and employees; but shall not include an employer-dominated organization;

(*v*) "union security" means a provision in a collective agreement whereby an employer agrees:

- (i) to hire or retain in his service members of a trade union only; or
- (ii) to give certain preferences as may be agreed in the hiring and/or retention in his service of union members; or
- (iii) to effect a check-off in respect of members of a trade union or in respect of all his employees;

(*w*) words importing the masculine gender include corporations, trade unions and employers' organizations, as well as females.

(2) No person shall cease to be an employee within the meaning of this Act by reason only of dismissal contrary to this Act.

(3) For the purposes of this Act, a "unit" means a group or a classification or classifications of employees and "appropriate for collective bargain ing" with reference to a unit, means a unit that is appropriate for such purposes whether it be an employer unit, craft unit, technical unit, plant unit, or any other unit and whether or not the employees therein are employed by one or more employer.

Rights of Employees and Employers

3. (1) (*a*) Every employees shall have the right to be a member of a trade union, to form, join, or assist trade unions, to bargain collectively through representatives of his own choice, and to engage in concerted activities, for the purpose of collective bargaining or mutual aid or protection.

(*b*) A trade union and the acts thereof shall not be deemed to be unlawful by reason only that one or more of its objects are deemed by common law to be in restraint of trade.

(*c*) Any act done by two or more members of a trade union, if done in contemplation or furtherance of an industrial or trade dispute, shall not be actionable unless the act would be actionable if done without any agreement or combination.

(*d*) No trade union shall be made a party to any action unless the trade union might be made a party irrespective of the provisions of this Act.

(*e*) A collective agreement shall not be the subject of any action in any court unless such collective agreement might be the subject of such action irrespective of any of the provisions of this Act.

(2) Every employer has the right to be a member of an employers' organization and to participate in the activities thereof.

UNFAIR LABOUR PRACTICES

4. (1) It shall be an unfair labour practice for an employer or any person acting on behalf of any employer:

(*a*) to participate in or interfere with the formation or administration of a trade union, or contribute financial or other support to it; Provided that an employer may, notwithstanding anything contained in this section, permit an employee or representative of a trade union to confer with him during working hours or to attend to the business of the organization during working hours without deduction of time so occupied in the computation of the time worked for the employer and without deduction of wages in respect of the time so occupied, or provide free transportation to representatives of a trade union for purposes of collective bargaining or permit a trade union the use of the employer's premises for the purposes of the trade union;

(*b*) to discriminate in regard to hiring or tenure of employment, or any term or condition of employment or to use coercion or intimidation of any kind with a view to encouraging or discouraging membership in or activity in or for a trade union or participation of any kind in a porceeding under this Act; Provided that nothing in this Act shall preclude an employer from making an agreement with a trade union to require as a condition of employment membership in or maintenance of membership in such trade union or the selection of employees by or with the advice of a trade union or any other condition in regard to employment, if such trade union has been designated or selected by a majority of employees in any such unit as their bargaining agent;

(*c*) to interfere with, restrain or coerce any employee in the exercise of any right conferred by this Act or to impose any condition in a contract of employment seeking to restrain an employee from exercising any right conferred by this Act;

(*d*) to refuse or fail to bargain collectively, in good faith, as required by this Act;

(*e*) to refuse to permit any duly authorized representative of a trade union with which he has entered into a collective agreement to negociate with him during working hours for the settlement of disputes or grievances of employees covered by the agreement, or to make any deductions from the wages of any such duly authorized representative of a trade union in respect of the time actually spent in negociating for the settlement of such disputes or grievances;

(*f*) to interfer in the selection of a trade union as a bargaining agent of the employees;

(*g*) to maintain a system of industrial espionage or to employ or direct any person to spy upon a member or proceedings of a trade union or the offices thereof or the exercice by an employee of any right provided by this Act;

(*h*) to threaten to shut down or move a plant or any part of a plant in the course of a trade or industrial dispute;

(i) to declare or cause a lockout or to make or threaten any change in wages, hours, conditions of employment, benefits or privileges while any application is pending before the Board or any matter is pending before a Conciliation Board appointed under the provisions of this Act.

2. Except as expressly provided, nothing in this Act shall be interpreted to affect the right of an employer to suspend transfer, lay off or discharge an employee for proper and sufficient cause.

5. It shall be an unfair labour practice for an employee or any person acting on behalf of a trade union:

(*a*) except with the consent of the employer, to attempt, at an employer's place of employment during the working hours of an employer of the employer, to persuade the employee to become or refrain from becoming or continuing to be a member of a trade union;

(*b*) to commence or take part in or attempt to persuade any employee to commence or take part in a strike while an application is pending before the Board or any matter is pending before a Conciliation Board established under the provisions of this Act.

COLLECTIVE BARGAINING

Application for Certification of Bargaining Agent

6. (1) A trade union may make application to the Board stating that a majority of the employees of an employer or employers or a majority of a unit of such employees, desire the trade union to bargain collectively on their behalf with their employer or employers, and requesting the Board to certify the applicant as the bargaining agent of such employees.

(2) Pending any application made hereunder, no employer shall make any change relating to the wages or hours of work of any employee affected by such application.

(3) Where no collective agreement is in force and no bargaining agent has been certified under this Act for the unit, the application may be made at any time.

(4) Where no collective agreement is in force but a bargaining agent has been certified under this Act for the unit, the application may be made after the expiry of twelve months from the date of certification of the bargaining agent, but not before, except with the consent of the Board.

(5) Where a collective agreement is in force between the employer or employers and a trade union, other than the applicant, relating to the bargaining unit or any portion or section thereof, no application shall be entertained before ten months have expired of the period of the agreement; Provided that an application may be made after ten months have expired of the period of the agreement, if the applicant establishes that at least fifty per cent of the employees who constitute the bargaining unit are either members of the applicant union or, within six months prior to the filing of the application have requested or authorized the applicant union to bargain collectively on their behalf with their employer, in which event a vote may be ordered or conducted by the Board in order to determine the desire of the majority of the employees in the unit and the application shall then be dealt with in the manner prescribed by subsection five of section eight of this Act.

7. If, in accordance with established trade union practice, the majority of a group of employees who belong to a craft by reason of which they are distinguishable from the employees as a whole, are separately organized into a trade union pertaining to the craft, such trade union may be certified by the

Board as bargaining agent of the said employees if the Board, in its discretion, is of the opinion that it is in the best interests of the employees, the employer and the public that this be done. If such group claims and is entitled to the rights conferred by this subsection the employees comprised in the craft shall not be entitled to vote for any of the purposes of any application or collective bargaining with such employer except when the application or collective bargaining relates solely to such craft; or shall such employees be taken into account in any manner in the computation of a majority in respect to any proceeding in which they are not entitled to vote.

Certification

8. (1) Where a trade union makes application for certification under this Act as bargaining agent of employees in a unit, the Board shall determine whether the unit in respect of which the application is made is appropriate for collective bargaining and the Board may, before certification, if it deems it appropriate, include additional employees in, or exclude employees from, the unit.

(2) When, pursuant to an application for certification under this Act by a trade union, the Board has determined that a unit of employees is appropriate for collective bargaining

(*a*) if the Board is satisfied that the applicant is a trade union; and

(*b*) if the Board is satisfied that the majority of the employees in the unit desire the trade union to bargain collectively on their behalf with their employer or employers;

the Board shall certify the trade union as the bargaining agent of the employees in the unit.

(3) The Board shall, for the purposes of determining whether the majority of the employees in a unit desire the applicant to bargain collectively on their behalf with their employer or employers, make or cause to be made such examination of records or other inquiries at it deems necessary, including the holding of such hearings or the taking of such votes as it deems necessary or expedient, and the Board may prescribe the nature of the evidence to be furnished to the Board.

(4) Except as hereinafter provided in subsection five of this section, in any vote ordered or conducted by the Board, the desire of the employees in the bargaining unit in respect of which a vote has been ordered or conducted shall be that expressed by the majority of the employees who actually cast ballots in such vote.

(5) Where an application for certification is made under the circumstances described in subsection five of section six of this Act, the Board shall, for the purposes of determining whether at least fifty per cent of the employees in the unit are members of the applicant union, make or cause to be made such examination of records or other inquiries as it deems necessary or expedient, including the holding of such hearings as it deems expedient, and the Board may prescribe the nature of the evidence to be furnished to the Board. If the Board is satisfied that at least fifty per cent of the employees in the unit affected by the application are members of the applicant trade union or have requested or authorized the applicant trade union as aforesaid, the Board shall order a vote to be taken and if, as a result of such vote the Board is satisfied that over fifty per cent of the employees in the unit affected by the application desire the applicant trade union to bargain collectively for them, it shall certify the applicant trade union as the bargaining agent of the employees in the unit.

(6) Where an application is made affecting the employees employed by two or more employers, the Board shall not certify the applicant in respect of the

employees of any employer unless it is satisfied that a majority of the employees of such employer desire the applicant to bargain collectively on their behalf with their employer.

9. (1) Notwithstanding anything in this Act, no trade union, the formation, administration, management, or policy of which is, or has been in the opinion of the Board

(*a*) influenced by an employer, or

(*b*) dominated by an employer, or

(*c*) assisted in any manner contrary to paragraph (*a*) of subsection one of section four of this Act,

shall be certified as a bargaining agent of employees, nor shall an agreement entered into between such trade union and such employer be deemed to be a collective agreement for the purposes of this Act.

(2) No employer-dominated organization shall be certified as a bargaining agent.

Effect of Certification—Notice to Negotiate

10. (1) Where a trade union is certified under this Act as the bargaining agent of the employees in a unit

(*a*) the trade union shall immediately replace any other bargaining agent of employees in the unit and shall have exclusive authority to bargain collectively on behalf of all employees in the unit;

(*b*) if another trade union had previously been certified as bargaining agent in respect of employees in the unit, the certification of the previously certified bargaining agent shall be deemed to be revoked in respect of such employees.

(2) Where the Board has under this Act certified a trade union as a bargaining agent of employees in a unit and no collective agreement with their employer is in force,

(*a*) the bargaining agent may, on behalf of the employees in the unit, by notice, require their employer to commence collective bargaining; or

(*b*) the employer of an employers' organization representing the employer may, by notice, require the bargaining agent to commence collective bargaining;

with a view to the conclusion of a collective agreement.

(3) Where the Board has under this Act certified a trade union as a bargaining agent of employees in a unit and a collective agreement in respect of such employees is then in force, the trade union shall be substituted as a party to the agreement in place of the previous bargaining agent, and may, notwithstanding anything contained in the agreement, upon two months' notice to the employer terminate the agreement insofar as it applies to those employees.

(4) Either party to a collective agreement, whether entered into before or after the commencement of this Act, may, within the period of two months next preceding the date of expiry of the term of, or preceding termination of the agreement, by notice, require the other party to the agreement to commence collective bargaining with a view to the renewal or revision of the agreement or conclusion of a new collective agreement.

Negotiation

11. Where notice to commence collective bargaining has been given under subsection two of section ten of this Act

(*a*) the certified bargaining agent and the employer, or an employers' organization representing the employer shall, without delay, but in any case within ten clear days after the notice was given or such further time as the parties may agree, meet and commence or cause authorized representatives on their behalf to meet and commence to bargain collectively in good faith with one another and shall make every reasonable effort to conclude a collective agreement; and

(*b*) the employer shall not, without consent by or on behalf of the employees affected, decrease rates of wages or alter any other term or condition of employment of employees in the unit for which the bargaining agent is certified until a collective agreement has been concluded or until a Conciliation Board appointed to endeavour to bring about agreement has reported to the Minister and seven days have elapsed after the report has been received by the Minister, whichever is earlier, or until the Minister has advised the employer that he has decided not to appoint a Conciliation Board.

12. Where a party to a collective agreement has given notice under subsection four of section ten of this Act to the other party to the agreement,

(*a*) the parties shall, without delay, but in any case within ten clear days after the notice was given or such further time as the parties may agree upon, meet and commence or cause authorized representatives on their behalf to meet and commence to bargain collectively in good faith and make every reasonable effort to conclude a renewal or revision of the agreement or a new collective agreement; and

(*b*) if a renewal or revision of the agreement or a new collective agreement has not been concluded before expiry of the term of, or termination of the agreement, the employer shall not, without consent by or on behalf of the employees affected, decrease rates of wages, or alter any other term or condition of employment in effect immediately prior to such expiry or termination provided for in the agreement, until a renewal or revision of the agreement or a new collective agreement has been concluded or a Conciliation Board, appointed to endeavour to bring about agreement, has reported to the Minister and seven days have elapsed after the report has been received by the Minister, whichever is earlier, or until the Minister has advised the employer that he has decided not to appoint a Conciliation Board.

CONCILIATION

13. Where a notice to commence collective bargaining has been given under this Act and

(*a*) collective bargaining has not commenced within the time prescribed by this Act; or

(*b*) collective bargaining has commenced;

and either party thereto requests the Minister in writing to instruct a Conciliation Officer to confer with the parties thereto to assist them to conclude a collective agreement or a renewal or revision thereof and such request is accompanied by a statement of the difficulties, if any, that have been encountered before the commencement or in the course of the collective bargaining, or in any other case in which in the opinion of the Minister it is advisable so to do, the Minister may instruct a Conciliation Officer to confer with the parties engaged in collective bargaining.

14. Where a Conciliation Officer fails to bring about an agreement between parties engaged in collective bargaining or in any other case where in the opinion of the Minister a Conciliation Board should be appointed to endeavour to bring about agreement between parties to a dispute, the Minister may appoint a Conciliation Board for such purpose, but the Minister shall not appoint a Conciliation Board in any case where the Board has found that either of the parties has failed or refused to bargain collectively in good faith.

Collective Agreements

15. (1) Every collective agreement entered into after the commencement of this Act shall contain a provision for final settlement without stoppage of work, during the life of the agreement, by arbitration or otherwise, of all differences between the parties to the agreement or on whose behalf it was entered into, concerning its meaning and violation, and concerning the settlement of any grievance not specifically covered by the terms of the agreement affecting the terms of employment or working conditions of any employee of group of employees.

(2) Where a collective agreement, whether entered into before or after the commencement of this Act, does not contain a provision as required by this section, the Board shall, upon application of either party to the agreement, by order, prescribe a provision for such purpose and a provision so prescribed shall be deemed to be a term of the collective agreement.

16. (1) Notwithstanding anything therein contained, every collective agreement, whether entered into before or after the commencement of this Act, shall, if for a term of less than a year, be deemed to be for a term of one year from the date upon which it came or comes into operation, or if for an indeterminate term shall be deemed to be for a term of at least one year from that date and shall not, except as provided by section ten of this Act or with the consent of the Board, be terminated by the parties thereto within a period of one year from that date.

(2) Nothing in this section shall prevent the revision of any provision of a collective agreement, other than a provision relating to the term of the collective agreement, that under the agreement is subject to revision during the term thereof.

17. When a bargaining agent has been certified under this Act, and pending the conclusion of a collective agreement, the following grievance procedure shall be regarded as being in effect between the parties concerned, unless modified by mutual consent within a period of thirty days after the date of certification:

(*a*) The union shall appoint, and the employer shall recognize, a Grievance Committee of not fewer than three members of the union and not more than the number of plant divisions or departments in the employer's establishment.

(*b*) Should any grievance arise between the employer and the union, or any of its members, or any other employees included in the bargaining unit, respecting the terms of employment or working conditions, an earnest effort shall be made to adjust such grievance forthwith in the following manner:

(i) Between the aggrieved employee and the foreman of the department involved, a decision to be rendered by the foreman within two full working days. Failing a mutually satisfactory adjustment between the aggrieved employee and the foreman:

(ii) Between a member or members of the Grievance Committee and the chief supervisory officer of the employer in charge of personnel, if any, or any other officer whom the employer shall designate for this purpose, a decision to be rendered by such officer within three full working days. Failing a mutually satisfactory adjustment between the Grievance Committee and the chief supervisory officer:

(iii) Between the Grievance Committee and a representative or representatives appointed by the employer for this purpose, a decision to be rendered within five full working days. Failing a mutually satisfactory adjustment between the Grievance Committee and the representative or representatives as aforesaid:

(iv) By a Board of Conciliation.

Strikes and Lockouts

18. Where a trade union on behalf of a unit of employees has made application to the Board for certification under this Act, the trade union shall not take a strike vote or authorize or participate in the taking of a strike vote of employees in the unit, and no employee in the unit shall strike, and the employer shall not declare or cause a lockout of the employees in the unit until the said application for certification has been finally determined by the Board.

19. Where a trade union on behalf of a unit of employees is entitled by notice under this Act to require their employer to commence collective bargaining with a view to the conclusion or renewal or revision of a collective agreement, the trade union shall not take a strike vote or authorize or participate in the taking of a strike vote of employees in the unit or declare or authorize a strike of the employees in the unit, and no employee in the unit shall strike, and the employer shall not declare or cause a lockout of the employees in the unit, until

(*a*) the bargaining agent and the employer, or representatives authorized by them in that behalf, have bargained collectively and have failed to conclude a collective agreement, and either

(*b*) a Conciliation Board has been appointed to endeavour to bring about agreement between them and seven days have elapsed from the date on which the report of the Conciliation Board was received by the Minister; or

(*c*) either party has requested the Minister in writing to appoint a Conciliation Board to endeavour to bring about agreement between them and seven days have elapsed since the Minister received the said request and

(i) no notice under subsection two of section twenty-two of this Act has been given by the Minister, or

(ii) the Minister has notified the party so requesting that he has decided not to appoint a Conciliation Board.

Provided that this section shall not be binding upon a trade union or any employee in the unit if the Board in any finding or decision holds or determines that an employer has refused or failed to bargain collectively in good faith with the trade union.

20. Nothing in this Act shall be interpreted to prohibit the suspension or discontinuance of operations in an employer's establishment in whole or in part, not constituting a lockout or strike.

CONCILIATION PROCEEDINGS

Conciliation Officers

21. Where a Conciliation Officer has, under this Act, been instructed to confer with parties engaged in collective bargaining or to any dispute, he shall, within fourteen days after being so instructed or within such longer period as the Minister may from time to time allow, make a report to the Minister setting out

(*a*) the matters, if any, upon which the parties have agreed;

(*b*) the matters, if any, upon which the parties cannot agree; and

(*c*) the advisability of appointing a Conciliation Board with a view to effecting an agreement.

Constitution of Conciliation Boards

22. (1) A Board of Conciliation and Investigation under this Act shall consist of three members appointed in the manner provided in this section.

(2) Where the Minister has decided to appoint a Conciliation Board, he shall forthwith, by notice in writing, require each of the parties within seven

days after receipt by the party of the notice, to nominate one person to be a member of the Conciliation Board, and upon receipt of the nomination within the seven days, the Minister shall appoint such person a member of the Conciliation Board.

(3) If either of the parties to whom notice is given under this section, fails or neglects to nominate a person within seven days after receipt of the notice, the Minister shall appoint as a member of the Conciliation Board, a person he deems fit for such purpose, and such member shall be deemed to be appointed on the recommendation of the said party.

(4) The two members appointed under subsections two and three of this section shall, within five days after the day on which the second of them is appointed, nominate a third person, who is willing and ready to act, to be a member and Chairman of the Conciliation Board, and the Minister shall appoint such person a member and Chairman of the Conciliation Board.

(5) If the two members appointed under subsections two and three of this section fail or neglect to make a nomination within five days after the appointment of the second such member, the Minister shall forthwith appoint as the third member and Chairman of the Conciliation Board, a person whom he deems fit for such purpose.

(6) When the Conciliation Board has been appointed, the Minister shall forthwith notify the parties of the names of the members of the Board.

(7) Where the Minister has given notice to parties that a Conciliation Board has been appointed under this Act, it shall be conclusively presumed that the Conciliation Board described in the said notice has been established in accordance with the provisions of this Act, and no order shall be made or process entered or proceedings taken in any court to question the granting of refusal of a Conciliation Board, or to review, prohibit or restrain establishment of that Conciliation Board or any of its proceedings.

23. Upon a person ceasing to be a member of a Conciliation Board before it has completed its work, the Minister shall appoint a member in his place who shall be selected in the manner prescribed by this Act for the selection of the person who has so ceased to be a member.

24. Each member of a Conciliation Board shall, before acting as such, take and subscribe before a person authorized to administer an oath or affirmation, and file with the Minister, an oath or affirmation in the following form:—

> I do solemnly swear (affirm) that I will faithfully, truly and impartially to the best of my knowledge, skill and ability, execute and perform the office of member of the Conciliation Board appointed to..................... and will not, except in the discharge of my duties, disclose to any person any of the evidence or other matter brought before the said Board. So help me God.

TERMS OF REFERENCE

25. (1) Where the Minister has appointed a Conciliation Board, he shall forthwith deliver to it a statement of the matters referred to it, and may, either before or after the making of its report, amend or add to such statement.

(2) After a Conciliation Board has made its report the Minister may direct it to clarify or amplify the report or any part thereof.

PROCEDURE

26. (1) A Conciliation Board shall, immediately after appointment of the Chairman thereof, endeavour to bring about agreement between the parties in relation to the matters referred to it.

(2) Except as otherwise provided in this Act, a Conciliation Board may determine its own procedure, but shall give full opportunity to all parties to present evidence and make representations.

(3) The Chairman may, after consultation with the other members of the Board, fix the time and place of sittings of a Conciliation Board and shall notify the parties as to the time and place so fixed.

(4) The Chairman and one other member of a Conciliation Board shall be a quorum, but, in the absence of a member, the other members shall not proceed unless the absent member has been given reasonable notice of the sitting.

(5) The decision of a majority of the members present at a sitting of a Conciliation Board shall be the decision of the Conciliation Board, and in the event that the votes are equal the Chairman shall have a casting vote.

(6) The Chairman shall forward to the Minister a detailed certified statement of the sittings of the Board, and of the members and witnesses present at each sitting.

(7) The report of the majority of its members shall be the report of the Conciliation Board.

(8) In any proceedings before the Conciliation Board, no person except with the consent of the parties shall be entitled to be represented by a barrister, solicitor or advocate and, notwithstanding such consent, a Conciliation Board may refuse to allow a barrister, solicitor or advocate to represent a party in any such proceedings.

27. (1) A Conciliation Board shall have the power of summoning before it any witnesses and of requiring them to give evidence on oath, or on solemn affirmation if they are persons entitled to affirm in civil matters, and orally or in writing, and to produce such documents and things as the Conciliation Board deems requisite to the full investigation and consideration of the matters referred to it, but the information so obtained from such documents shall not, except as the Conciliation Board deems expedient, be made public.

(2) A Conciliation Board shall have the same power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court of record in civil cases.

(3) Any member of a Conciliation Board may administer an oath, and the Conciliation Board may receive and accept such evidence on oath, affidavit or otherwise as it in its discretion may deem fit and proper whether admissible in evidence in a court of law or not.

28. A Conciliation Board or a member of a Conciliation Board or any person who has been authorized for such purpose in writing by a Conciliation Board may, without any other warrant than this section, at any time, enter a building, ship, vessel, factory, workshop, place, or premises of any kind wherein work is being or has been done or commenced by employees or in which an employer carries on business or any matter or thing is taking place or has taken place, concerning the matters referred to the Conciliation Board, and may inspect and view any work, material, machinery, appliance or article therein, and interrogate any person in or upon any such place, matter or thing hereinbefore mentioned; and no person shall hinder or obstruct the Board or any person authorized as aforesaid in the exercise of a power conferred by this section or refuse to answer an interrogation made as aforesaid.

REPORT

29. A Conciliation Board, shall, within fourteen days after the appointment of the Chairman of the Board, or within such longer period as may be agreed upon by the parties, or as may from time to time be allowed by the Minister, report its findings and recommendations to the Minister.

30. On receipt of the report of a Conciliation Board the Minister shall forthwith cause a copy thereof to be sent to the parties and he may cause the report to be published in such manner as he sees fit.

31. No report of a Conciliation Board, and no testimony or proceedings before a Conciliation Board shall be receivable in evidence in any court in Canada except in the case of a prosecution for perjury.

32. Failure of a Conciliation Officer or Conciliation Board to report to the Minister within the time provided in this Act shall not invalidate the proceedings of the Conciliation Officer or Conciliation Board or terminate the authority of the Conciliation Board under this Act.

ARBITRATION

33. Where a Conciliation Board has been appointed and at any time before or after it has made its report, if the parties so agree in writing, the recommendation of the Conciliation Board shall be binding on the parties and they shall give effect thereto.

CONCILIATION BOARDS—GENERAL

34. (1) Unless the Governor in Council otherwise orders, the following remuneration shall be paid:

(*a*) to a member of a Conciliation Board other than the chairman, an allowance of five dollars for each day, not more than three, during which he is engaged in considering the recommendation of a person to be the third member of the Board; and

(*b*) to a member of the Board an allowance at the rate of fifty dollars for each day he is present when the Board sits and for each day necessarily spent travelling from his place of residence to a meeting of the Board and returning therefrom and for each day not exceeding two days he is engaged in completion of the Board's report.

(2) Each member of a Conciliation Board is entitled to his actual and reasonable travelling and living expenses for each day that he is absent from his place of residence, in connection with the work of the Board.

35. Every person who is summoned by the Board or a Conciliation Board or Industrial Inquiry Commission and duly attends as a witness shall be entitled to an allowance for expenses determined in accordance with the scale for the time being in force with respect to witnesses in civil suits in the superior court in the province where the inquiry is being conducted, and in any event, he shall be entitled to not less than four dollars for each day he so attends.

36. The Minister may provide a Conciliation Board, or Industrial Inquiry Commission with a secretary, stenographer, and such clerical or other assistance as to the Minister seems necessary for the performance of its duties and fix their remuneration.

INDUSTRIAL INQUIRY COMMISSION

37. (1) The Minister may either upon application or of his own initiative, where he deems it expedient, make or cause to be made any inquiries he thinks fit regarding industrial matters, and may do such things as seem calculated to maintain or secure industrial peace and to promote conditions favourable to settlement of disputes.

(2) For any of the purposes of subsection one of this section or where in any industry a dispute or difference between employers and employees exists or is apprenhended, the Minister may refer the matters involved to a Commission, to be designated as an Industrial Inquiry Commission, for investigation thereof, as the Minister deems expedient, and for report thereon; and shall furnish the Commission with a statement of the matters concerning which such inquiry is to be made, and, in the case of any inquiry involving any particular persons or parties, shall advise such persons or parties of such appointment.

(3) Immediately following its appointment an Industrial Inquiry Commission shall inquire into the matters referred to it by the Minister and endeavour to carry out its terms of reference; and in the case of a dispute or difference in which a settlement has not been effected in the meantime the report of the result of its inquiries, including its recommendations, shall be made to the Minister within fourteen days of its appointment or such extension thereof as the Minister may from time to time grant.

(4) Upon receipt of a report of an Industrial Inquiry Commission relating to any dispute or difference between employers and employees the Minister shall furnish a copy to each of the parties affected and shall publish the same in such manner as he sees fit.

(5) An Industrial Inquiry Commission shall consist of one or more members appointed by the Minister and the provisions of sections twenty-seven and twenty-eight of this Act shall apply, mutatis mutandis, as though enacted in respect of that Commission and the Commission may determine its own procedure but shall give full opportunity to all parties to present evidence and make representations.

(6) The Chairman and members of an Industrial Inquiry Commission shall be paid remuneration and expenses at the same rate as payable to members of a Conciliation Board under this Act.

ADMINISTRATION

MINISTER

38. The Minister of Labour shall be charged with the administration of this Act and shall exercise the powers and perform the duties imposed on the Minister by this Act.

CANADA LABOUR RELATIONS BOARD

39. (1) There shall be a labour relations board to administer this Act which shall be known as the Canada Labour Relations Board and shall consist of a chairman, and such number of other members as the Governor in Council may determine, not exceeding eight consisting of an equal number of members representative of employees and employers.

(2) The members of the Board shall be appointed by the Governor in Council and shall hold office during pleasure.

(3) In addition to the chairman and members of the Board, the Governor in Council may appoint a person as vice-chairman to act in the place of the chairman during his absence for any reason, and the vice-chairman shall be a member of the Board while so acting.

(4) The head office of the Board shall be in Ottawa.

(5) The Board shall have the powers of commissioners under Part I of the Inquiries Act.

(6) The Board may receive and accept such evidence and information on oath, affidavit or otherwise as in its discretion it may deem fit and proper whether admissible as evidence in a court of law or not.

(7) The members shall be paid such remuneration as may be fixed by the Governor in Council, and such actual and reasonable expenses as may be incurred by them in the discharge of their duties.

40. The Board may by order authorize any person or board to exercise or perform all or any of its powers or duties under this Act relating to any particular matter and a person or board so authorized shall with respect to such matter have the powers of commissioners under Part I of the Inquiries Act.

41. The Board may, with the approval of the Governor in Council, make rules governing its procedure and, where an application for certification in respect of a unit has been refused, the time when a further application may be made in respect of the same unit by the same applicant.

Powers of Board

42. (1) If in any proceeding under this Act a question arises as to whether

(*a*) a person is an employer or employee;

(b) an organization or association is an employers' organization or a trade union;

(*c*) in any case a collective agreement has been entered into and the terms thereof and the persons who are parties to the collective agreement or on whose behalf the collective agreement was entered into;

(*d*) a collective agreement is by its terms in full force and effect;

(*e*) any party to collective bargaining has failed or refused to bargain collectively in good faith;

(*f*) a group of employees is a unit appropriate for collective bargaining;

(*g*) an employee belongs to a craft or group exercising technical skills;

(*h*) a person is a member in good standing of a trade union; or

(*i*) a violation has been committed of any of its provisions; the Board shall decide the question and its decision shall be final and conclusive for all the purposes of this Act.

(2) In addition to any other powers conferred by this Act, the Board shall have power to make orders:

(*a*) requiring an employer to bargain collectively;

(*b*) requiring any person to refrain from violations of this Act or from engaging in any unfair labour practice;

(*c*) requiring an employer to reinstate any employee discharged contrary to the provisions of this Act and to pay such employee the monetary loss suffered by reason of such discharge;

(*d*) requiring an employer to disestablish an employer-dominated organization;

(*e*) rescinding or amending any order or decision of the Board upon receipt of evidence to the effect that such order or decision was obtained by fraudulent means.

(3) Upon application by a trade union, the Board may order or establish that a collective agreement made or being negotiated or proposed to be entered into, renewed or amended, shall include or be deemed to include such provisions of union security, as the Board shall decide to be appropriate; Provided that no provision shall be ordered or established by the Board, which, in the opinion of the applicant, is less satisfactory than any provision on the same or related subject contained in any collective agreement relating to any of the employees in the bargaining unit, in force, or which expired within six months prior to such collective bargainng.

43. (1) A decision or order of the Board is final and conclusive and not open to question, or review, but the Board may, if it considers it advisable so to do, reconsider any decision or order made by it under this Act, and may vary or revoke any decision or order made by it under this Act.

(2) There shall be no appeal from an order of decision of the Board under this Act, and the Board shall have full power to determine any question of fact necessary to its jurisdiction, and its proceedings, orders and decisions shall not be reviewable by any court of law or by any certiorari, mandamus, prohibition, injunction or other proceeding whatsoever.

44. Upon the request of a trade union which represents a majority of the employees who constitute a bargaining unit of his employees, and upon receiving from any employee in such unit a request in writing to do so, an employer shall deduct and pay in regular periodic payments out of the wages due each such employee, to the person designated by the trade union to receive the same, the union dues of each such employee until any collective agreement then in force is terminated.

ENFORCEMENT

45. (1) Any employer or trade union may apply to the Board for an order that any person, employee, trade union, employer or employers' organization has violated a provision of this Act or has done some thing which is prohibited by this Act.

(2) Upon receipt of such an application, the Board shall by notice in writing, direct the person making the complaint and the person against whom the complaint has been made to appear before it and shall hear and receive such evidence as may be presented to it.

(3) After hearing the evidence, as aforesaid, the Board may, if it is of the opinion that there has been a violation of any of the provisions of this Act, issue an order indicating the precise nature of the violation.

(4) Where an order is made by the Board pursuant to subsection three of this section, the Chief Executive Officer of the Board or anyone acting through or under him, may file such order, duly certified by the Chairman of the Board, in the Police or Magistrate's Court of the jurisdiction in which the violation referred to in the said order took place, and the Magistrate of the said Court shall, by summons issued in the usual manner, thereupon direct the person, employee, trade union, employer or employers' organization against whom the order was made to appear before him and shall impose upon such person, employee, trade union, employer or employers' organization the punishment provided in this Act for the violation specified in the order of the Board. For the purpose of any proceedings taken under this subsection the fact of the violation shall be sufficiently proved in any court of law by the filing of the said order of the Board certified by the Chairman of the Board.

(5) If, in the opinion of a Magistrate, the order of the Board is ambiguous or its meaning not clear in any particular, he may refer to the Board any question or matter for clarification by the said Board.

(6) The Board may, if it wishes, appeal from any decision or judgment of a Police Magistrate.

46. Every employer and every person acting on behalf of an employer who decreases a wage rate or alters any term or condition of employment contrary to section eleven or section twelve of this Act is guilty of an offence and liable on summary conviction to a fine not exceeding

(*a*) ten dollars in respect of each employee whose wage rate was so decreased or whose term or condition of employment was so altered, or

(*b*) two hundred and fifty dollars,

whichever is the greater, for each day during which such decrease or alteration continues contrary to this Act.

47. (1) Every person, trade union and employers' organization who violates section four or section five is guilty of an offence and liable upon summary conviction,

(*a*) if an individual, to a fine not exceeding two hundred dollars; or

(*b*) if a corporation or employers' organization, to a fine not exceeding five hundred dollars; or

(*c*) if a trade union, to a fine not exceeding two hundred and fifty dollars.

(2) Where an employer is convicted for violation of this Act by reason of his having suspended, transferred, laid off or discharged an employee contrary to this Act, the convicting court, judge or magistrate in addition to any other penalty authorized by this Act shall order the employer to pay to the employee such sum as in the opinion of the court, judge or magistrate, as the case may be, is equivalent to the wages, salary or other remuneration that would have accrued to the employee up to the date of conviction but for such suspension, transfer, lay-off or discharge, and shall further order the employer to reinstate the employee in the position which he would have but for such suspension, transfer, lay-off or discharge.

(3) Every person, trade union and employers' organization who contrary to this Act refuses or neglects to comply with any lawful order of the Board is guilty of an offence and liable on summary conviction to a fine not exceeding fifty dollars for each day during which such refusal or failure continues.

48. (1) Every employer who declares or causes a lockout contrary to this Act is guilty of an offence and liable upon summary conviction to a fine not exceeding two hundred and fifty dollars for each day that the lockout exists.

(2) Every person acting on behalf of an employer who declares or causes a lockout contrary to this Act is guilty of an offence and liable on summary conviction to a fine not exceeding three hundred dollars.

(3) Every trade union that declares or authorizes a strike contrary to this Act is guilty of an offence and liable upon summary conviction to a fine not exceeding one hundred and fifty dollars for each day that the strike exists.

(4) Every officer or representative of a trade union who declares or authorizes a strike contrary to this Act is guilty of an offence and liable upon summary conviction to a fine not exceeding three hundred dollars.

49. Every person, trade union or employers' organization who does anything prohibited by this Act or who refuses or neglects to do anything required by this Act to be done by him is guilty of an offence and, except where some other penalty is by this Act provided for the act, refusal or neglect is liable on summary conviction,

(*a*) if an individual, to a fine not exceeding one hundred dollars; or

(*b*) if a corporation or employers' organization, to a fine not exceeding five hundred dollars;

(*c*) if a trade union, to a fine not exceeding two hundred and fifty dollars.

50. (1) Where the Minister receives a complaint in writing from a party to collective bargaining that any other party to such collective bargaining has failed to comply with paragraph (*a*) of section eleven of this Act or with paragraph (*a*) of section twelve of this Act, he may refer the same to the Board.

(2) Where a complaint from a party to collective bargaining is referred to the Board pursuant to subsection one of this section, the Board shall inquire into the complaint and may dismiss the complaint or may make an order requiring any party to such collective bargaining to do such things as in the opinion of the Board are necessary to secure compliance with paragraph (*a*) of section eleven or paragraph (*a*) of section twelve of this Act.

(3) Every employer, employers' organization, trade union or other person in respect of whom an order is made under this section, shall comply with such order.

51. (1) A person claiming to be aggrieved because of an alleged violation of any of the provisions of this Act may make a complaint in writing to the Board and the Board, upon receipt of such complaint, may require an Industrial Inquiry Commission appointed by it pursuant to section thirty-seven of this Act or a Conciliation Officer to investigate and make a report to it in respect of the alleged violation.

(2) Upon receipt of a report pursuant to subsection one of this section, the Board shall furnish a copy to each of the parties affected and if the Board considers it desirable to do so, shall publish the same in such manner as it sees fit.

(3) The Board shall take into account any report made pursuant to this section in granting or refusing to grant consent to prosecute under section fifty-three of this Act.

52. Every person is guilty of an indictable offence and liable to a fine not exceeding five thousand dollars, and not less than five hundred dollars or to imprisonment for a term not exceeding five years and not less than six months, or to both such fine and such imprisonment, who corruptly

(*a*) makes any offer, proposal, gift, loan or promise, or gives or offers any compensation or consideration, directly or indirectly, to a person concerned in the administration or enforcement of this Act or having or expected to have any duties to perform thereunder, for the purpose of influencing such person in the performance of his duties; or

(*b*) being a person concerned in the administration or enforcement of this Act or having or expected to have any duties to perform thereunder, accepts or agrees to accept or allows to be accepted by any person under his control or for his benefit any such offer, proposal, gift, loan, promise, compensation or consideration.

53. (1) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Board.

(2) A consent by the Board indicating that it has consented to the prosecution of a person named therein for an offence under this Act alleged to have been committed, or in the case of a continuing offence, alleged to have commenced, on a date therein set out, shall be a sufficient consent for the purposes of this section to the prosecution of the said person for any offence under this Act committed by or commencing on the said date.

54. In addition to any other penalties imposed or remedies provided by this Act, the Governor in Council, upon the application of the Board and upon being satisfied that any employer has wilfully disregarded or disobeyed any order made by the Board, may appoint a controller to take possession of any business, plant or premises of such employer as a going concern and operate the same on behalf of His Majesty until such time as the Governor in Council is satisfied that upon the return of such business, plant or premises to the employer the order of the Board will be obeyed.

APPLICATION

55. This Act shall apply in respect of employees who are employed upon or in connection with the operation of any work, undertaking or business which is within the legislative authority of the Parliament of Canada, including, but not so as to restrict the generality of the foregoing,

(*a*) works, undertakings or businesses operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada;

(*b*) railways, canals, telegraphs and other works and undertakings connecting a province with any other or others of the provinces, or extending beyond the limits of a province;

(*c*) lines of steam and other ships connecting a province with any other or others of the provinces or extending beyond the limits of a province;

(*d*) ferries between any province and any other province or between any province and any country other than Canada;

(*e*) aerodromes, aircraft and lines of air transportation;

(*f*) radio broadcasting stations;

(*g*) such works or undertakings as, although wholly situate within a province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces; and

(*h*) works, undertakings or business of any company or corporation incorporated by or under an Act of the Parliament of Canada;

(*i*) such works, undertakings, or businesses as are done, operated or performed by or on behalf of or by or for an agency of His Majesty in right of Canada;

(*j*) any work, undertaking or business outside the exclusive legislative authority of the legislature of any province; and in respect of the employers of all such employees in their relations with such employees and in respect of trade unions and employers' organizations composed of such employees or employers.

56. (1) Where the Governor in Council deems it necessary for the national security of Canada or for the settlement or prevention of existing or apprehended disputes or differences between employers and employees, of such dimensions or nature that they imperil the welfare of, or concern or would imperil the welfare of, or concern, the nation as a whole, the Governor in Council may, by proclamation, declare that the provisions of this Act in whole or in part apply to employees and employers in any work, undertaking or business in addition to those mentioned in section fifty-five of this Act, and, upon such proclamation being made, this Act or the provisions thereof specified in the proclamation shall apply in respect of the said employees and employers.

(2) The issue of a proclamation under subsection one of this section shall be conclusive evidence that it is necessary that the provisions of this Act or provisions thereof specified in the proclamation apply to employees and employers in any work, undertaking or business therein specified, for the national security of Canada or for the removal or prevention of real or apprehended disputes or differences of such dimensions or nature that they imperil the welfare of, or concern, or would imperil the welfare of or concern, the nation as a whole, and of the continuance of the necessity of such application until the issue of a further proclamation under the authority of the Governor in Council that the necessity no longer exists.

57. Notwithstanding anything contained in any other Act, no application for mandamus or injunction may be made to any Court in the Yukon or Northwest Territories in connection with any dispute or difference between an employer or employers and his or their employees except by or with the consent of the Board, evidenced by a certificate, signed by or on behalf of the Chairman of the Board.

ARRANGEMENTS WITH PROVINCES

58. (1) Where legislation enacted by the legislature of a province and this Act are substantially uniform, the Minister of Labour may, on behalf of the Government of Canada, with the approval of the Governor in Council, enter into an agreement with the government of the province to provide for the administration by officers and employees of Canada of the provincial legislation.

(2) An agreement made pursuant to subsection one of this section may provide

(*a*) for the administration by Canada of the said legislation of the province with respect to any particular undertaking or business;

(*b*) that the person who is from time to time the Minister may on behalf of the province exercise or perform powers or duties conferred under the legislation of the province referred to in subsection one of this section;

(*c*) that the persons who from time to time are members of the Board, or other officers and employees of Caanda, may exercise or perform powers or duties conferred or imposed under the said legislation of the province, either by way of appeal or otherwise; and

(*d*) for payment by the government of the province to the Government of Canada for expenses incurred by the said Government of Canada in the administration of the said legislation of the province.

59. Where the legislature of a province has enacted legislation substantially uniform with this Act and

(*a*) an agreement has been entered into between the Government of Canada and the government of such province; or

(*b*) such legislation so provides and the Governor in Council so orders, the person who is from time to time the Minister and the persons who, from time to time, are members of the Board, and other officers or employees of Canada, may exercise the powers and perform the duties specified in such legislation or agreement.

GENERAL

60. No proceeding under this Act shall be deemed invalid by reason of any defect in form or any technical irregularity.

61. For the purpose of this Act, an application to the Board or any notice or any collective agreement may be signed, if it is made, given or entered into

(*a*) by an employer who is an individual, by the employer himself;

(*b*) where by several individuals, who are jointly employers, by a majority of the said individuals;

(*c*) by a corporation, by one of its authorized managers or by one or more of the principal executive officers;

(*d*) by a trade union or employers' organization, by the president and secretary or by any two officers thereof or by any person authorized for such purpose by resolution duly passed at a meeting thereof.

62. (1) For the purpose of this Act, and of any proceedings taken thereunder, any notice or other communication sent through His Majesty's mails shall be presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of mail.

(2) A document may be served or delivered for the purposes of this Act or any proceedings thereunder in the manner prescribed by regulation.

63. (1) Any document purporting to contain, or to be a copy of any rule, decision or order of the Board, and purporting to be signed by a member of the Board, or the chief executive officer thereof, shall be accepted by any court as evidence of the regulation, rule, direction, order or other matter therein contained of which it purports to be a copy.

(2) A certificate purporting to be signed by the Minister or his Deputy or by an official in his department stating that a report, request or notice was or was not received or given by the Minister pursuant to this Act, and if so received or given, the date upon which it was so received or given, shall be prima facie evidence of the facts stated therein without proof of the signature or of the official character of the person appearing to have signed the same.

64. (1) Each of the parties to a collective agreement shall forthwith upon its execution file one copy with the Minister.

(2) The Board may direct any trade union or employers' organization which is a party to any application for certification, or is a party to an existing collective agreement, to file with the Board

(*a*) a statutory declaration signed by its president or secretary stating the names and addresses of its officers; and

(*b*) a copy of its constitution and by-laws;
and the trade union or employers' organization shall comply with the direction within the time prescribed by the Board.

REGULATIONS

65. (1) The Governor in Council may make regulations

(*a*) as to the time within which anything authorized by this Act shall be done;

(*b*) generally for carrying any of the purposes or provisions of this Act into effect.

(2) Regulations made under this section shall go into force on the day of the publication thereof in the *Canada Gazette*, and they shall be laid before Parliament within fifteen days after such publication, or, if Parliament is not then in session, within fifteen days after the opening of the next session thereof.

ANNUAL REPORT

66. An annual report with respect to the matters transacted by him under the Act shall be laid by the Minister before Parliament within the first fifteen days of each session thereof.

GENERAL

67. There may be employed in the manner authorized by law, such officers, clerks and employees as are necessary for the administration of this Act, including a Chief Executive Officer of the Board.

68. The expenses of the administration of this Act shall be paid out of moneys provided by Parliament.

69. All fines and penalties imposed under this Act shall be payable to the Receiver General of Canada and belong to His Majesty in right of Canada for the public uses of Canada.

CONTINUATION

70. (1) The Canada Labour Relations Board established by this Act shall be the successor to the Wartime Labour Relations Board established by order of His Excellency the Governor General in Council of the seventeenth day of February, one thousand nine hundred and forty-four, as amended from time to time, and the said order, as amended, shall be deemed to have been revoked on the coming into force of this Act, and all acts and things done and matters and proceedings commenced by the said Wartime Labour Relations Board under the said order, as amended, shall, in so far as the said matters and proceedings are within the authority of the Canada Labour Relations Board established by this Act, be continued by the Canada Labour Relations Board under this Act.

(2) Every regulation, order, decision or determination or any other act or thing, made, given or done by or on behalf of the Wartime Labour Relations Board or by the Minister or by any other person under the order of His Excellency the Governor General in Council mentioned in subsection one of this section, shall, in so far as the said regulation, order, decision, determination, act or thing might be done under this Act, be deemed to have been made, given or done by the Canada Labour Relations Board or the Minister or such other person under this Act.

(3) Where a person was certified, before the commencement of this Act, under the order of His Excellency the Governor General in Council mentioned in subsection one of this section, as a bargaining agent pursuant to an application by a trade union (including therein an employees' organization as defined in the said order) the said trade union shall be deemed to have been certified as

a bargaining agent for the purposes of this Act for the employees on behalf of whom the said person was so certified so far as this Act applies to the said employees, and where in any other case a person was so certified as a bargaining agent such person shall be deemed to be a bargaining agent for the purposes of this Act for the employees on behalf of whom he was so certified so far as this Act applies to the said employees.

REPEAL AND COMMENCEMENT

71. The *Industrial Disputes Investigation Act* is repealed.

72. This Act shall come into force on a day to be fixed by proclamation.

A NATIONAL LABOUR CODE PROPOSED BY THE CANADIAN CONGRESS OF LABOUR FEBRUARY, 1948 EXPLANATORY MEMORANDUM

Last session, the Canadian Congress of Labour proposed a large number of amendments to the government's bill on this subject. Neither the bill nor the amendments became law, as the session ended before they could be further considered. It is now understood that the government is about to introduce a new bill, substantially the same as last year's. The Congress has therefore decided to draft its own proposals, for the consideration of the government, members of parliament and the public.

The Congress has called its bill "A National Labour Code." It should be emphasized, however, that its coverage, though much wider than that of last year's government bill, is still not as wide as the Congress would like. But anything more would probably require an amendment to the British North America Act. This bill is probably as near as we can get to a genuine national code under the Constitution as it stands.

The main features of the bill are:

(1) It absolutely *outlaws "company unions"* (sections 2 (1) (n) and (u), 4 (1) (a), (b) and (f), and 9 (1) and (2). *The Government's 1947 bill did not effectively do this.*

(2) It definies, and *explicitly provides for, the check-off and union security* (sections 2 (1) (d) and (v), 42 (3), and 44. *This is new.* Employers must grant the check-off upon request by a union representing a majority of the employees and upon request of the individual employee concerned. If a union asks for it, the Labour Relations Board may order the inclusion in a collective agreement of such form of union security (closed shop, union shop, maintenance of membership, Rand formula, etc.) as it considers appropriate, but may not order anything which the union considers less favourable than what it has had in any existing agreement or any agreement which has expired in the preceding six months.

(3) If the Labour Relations Board is satisfied that a union is a genuine union and has a majority, *it must certify the union, automatically. Votes* anr held *only* if the Board *is in doubt about* whether the union really has a majority (section 8 (2) and (3). *This also is new.*

(4) If a vote is ordered, and the union wins *a majority of those voting,* in most cases *certification follows automatically.* There is only *one exception. If a union has a collective agreement,* then *no other union* can apply for certification for the same unit or any part of it *until ten months after the agreement comes into force.* When the ten months have passed, another union may apply, but it must satisfy the Board that *at least fifty per cent* of the employees are members or have within the preceding six months authorized the applicant to

bargain on their behalf. A vote will then follow, but the applicant union will be certified only if it gets a *majority of those eligible to vote.* (Sections 6 (5) and 8 (4) and (5)). The object of these provisions is to make it easy for employees to bargain collectively but to discourage irresponsible "raiding" and avoid unnecessary votes, which are a nuisance to the employer and the employees and costly to the public.

(5) The bill *protects unions against court actions of any kind* except as expressly provided by the bill itself. *This is new.* Like the Ontario Rights of Labour Act and the Saskatchewan Trade Union Act, it provides that trade unions and their acts shall not be deemed unlawful merely because they are deemed by common law to be in restraint of trade; that any act done by two or more union members in contemplation of furtherance of a trade dispute shall not be actionable unless it would be actionable if done without any agreement or combination; that no union shall be made a party to any court action unless it might be made irrespective of this bill; and that a collective agreement shall not be the subject of any court action unless it might be the subject of such action irrespective of this bill (section 3 (1) (b) - (e)).

(6) The bill *lists, and carefully and comprehensively defiines nine unfair labour practices by employers* (section 4 (1)). The government's 1947 bill had four. These attempts to set up company unions, interference in the choice of a bargaining agent, failure or refusal to bargain collectively in good faith, the use of spies, and threats to shut down or move a plant during a trade dispute (the famous "Mohawk Valley formula"). *These last three are wholly new.*

(7) *The bill gives the Labour Relations Board very wide powers.* The Board can order an employer to bargain collectively; require any person to refrain from violations of the Act or any unfair labour practice; order reinstatement of any employee discharged contrary to the Act, with back pay; disestablish a company union; decide when there has been a violation of the Act (section 42). The Board's decisions are *final and without appeal,* and as in Ontario, and Saskatchewan, *not reviewable by any court by any proceeding whatsoever* (section 43.) *All this is new.* This is to protect the Board, unions, employers and the public against interminable and costly legal proceedings, and against virtual nullification of the Act by judges with little or no acquaintance with industrial relations. Delay may be fatal to good industrial relations, and "the law's delay" is proverbial.

(8) The bill provides *a simple, quick and nearly automatic method of enforcement,* instead of the complicated, slow, doubtful and generally ineffective method provided by all existing Canadian legislation except the Saskatchewan Act. The *Board* decides whether there has been a violation of the Act; the *Board,* not the Minister, decides whether or not to prosecute; and the *function of the police court is simply to impose the fines specified in the Act,* and where an employee has been discharged, laid off, suspended or transferred contrary to the Act, to order his *reinstatement,* with back pay, in the position *he would have had* (that is, *allowing for possible promotion*) but for such discharge, etc. (sections 45 (4) and 47 (2)). In addition, if the Board and the government are satisfied that an employer has *wilfully disregarded or disobeyed an order* of the Board, the *government may put a controller in charge of the business until the employer complies* (section 54). *This is all new.*

(9) The elaborate and complex *strikes and lockouts* sections of the Government's 1947 bill are replaced by two simple sections (18 & 19). The first prohibits strikes and lockouts and strike votes while an application for certification is before the Board. The second provides that, where a union is entitled to give an employer notice to bargain for an agreement or a renewal or revision of an agreement, there shall be no strikes or lockouts until the parties have bargained collectively and failed to reach agreement and *either* a Conciliation

Board has been appointed and *seven days* have passed since it reported, *or* either party has asked for a Conciliation Board and *seven days* have passed and the Minister has taken no steps to appoint a Board or has notified the party making the request that he has decided not to appoint a Board. This is similar to section 21 of the Government's 1947 bill, but *cuts the waiting period in half.* (*The time for giving notice to bargain is also cut in half* (sections 11 (*a*) and 12 (*a*).) The Congress bill also *prohibits* the establishment of a Conciliation Board where the Labour Relations Board has found that *either party has failed or refused to bargain collectively in good faith* (section 14), and provides that *employees and unions* shall be *exempt from the no strike provisions* where the Labour Relations Board has found that the employer has failed or refused to bargain collectively (section 19, proviso).

Section 22 of the Government's 1947 bill, dealing with strikes during the life of an agreement, disappears. So does section 23, which provides that where a Conciliation Board has been appointed to deal with a dispute "otherwise than during the term of an agreement or in the course of collective bargaining," strikes and lockouts are prohibited till fourteen days after the Board's report. So does section 24, prohibiting strikes by uncertified unions.

(10) The bill covers *every industry within the jurisdiction of the Dominion,* and explicity includes *business with Dominion charters, all Crown companies, and similar bodies, and the Dominion civil service* (sections 2 (1) (*k*) and 55). *All this is new.* It also provides that the Governor in Council may, by proclamation, *bring any other industry* under the Act, in whole or in part, where the Government thinks it necessary for the *national security,* or for the settlement of disputes *"of such dimensions or nature that they imperil the welfare of, or concern, the nation as a whole"* (section 56). *This is entirely new, and vitally important.* It would allow the Dominion to intervene in disputes like the packing-house strike of last year, or a nation-wide steel strike like that of 1946, instead of having to stand idly by, a helpless spectator, while various provinces, with widely varying laws, tried to deal with nation-wide employers and nation-wide unions. The bill also provides for co-operative arrangements with the provinces, along the same lines as the Government's 1947 bill (sections 58-59).

(11) *Injunctions* generally fall within provincial jurisdiction, and therefore cannot be dealt with in a Dominion bill. The only exception is the Yukon and the Northwest Territories, where the Dominion's authority is complete. The bill therefore provides that in the Yukon and the N.W.T., *no mandamus or injunction shall be applied for in any trade dispute except with the consent of the Labour Relations Board* (section 57). This section, which does not appear in any other legislation in Canada, should serve as a model for provincial legislation.

The chief differences between the Congress bill and the Government's 1947 bill, apart from those already noted, are:

(1) The *disappearance* of the Government bill's *section 11,* which allowed the Labour Relations Board to *revoke certification when it thought the union no longer represented a majority of the employees.* The Congress denounced this as an invitation to unscrupulous employers to defeat the whole purpose of the legislation.

(2) *The disappearance of every provision making collective agreements binding in law.* These provisions had opened up the possibility of unions being involved in endless litigation, with the lawyers virtually taking over industrial relations. If these provisions had remained, even the protection provided by the Congress bill's section 3 (1) (*d*) and (*e*) would not have been much use.

(3) *Provision for the establishment of grievance procedure immediately upon certification* (section 17 of the Congress bill). This would give the union certain rights, and the employees certain protection, even if the employer

deliberately spun out negotiations. The existence of this provision would remove some of the temptation to employers to try this kind of thing.

(4) The *disappearance* of the Government bill's section 9 (3) (*a*), giving *any individual employer a veto on certification of a union for employees of more than one employer.*

(5) The *disappearance* of the Government bill's sections 54 and 67 (1) (*b*), which *empowered the Governor in Council to exclude any Crown companies, or any employer or employee or class of employers or employees from the operation of the Act.*

(6) *Penalties:* The Congress bill, besides *greatly restricting the number and scope of the offences for which unions can be prosecuted, also decreases the fines which can be levied on unions* (sections 47 (1) (*c*) and 49 (*c*)).

(7) The *disappearance* of the Government bill's section 26, providing for *individual presentation of grievances. This would have undermined the whole structure of collective bargaining.*

Canada. Industrial Relations: Standing Committee on, 1947/48

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SESSION 1947-48

HOUSE OF COMMONS

STANDING COMMITTEE

ON

INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE

2d report

No. 2

THURSDAY, APRIL 29, 1948

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MINUTES OF PROCEEDINGS

Thursday, 29th April, 1948.

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. The Chairman, Mr. P. E. Cote, presided.

Members present: Messrs. Adamson, Archibald, Black (*Cumberland*), Bourget, Case, Cote (*Verdun*), Croll, Dickey, Gauthier (*Nipissing*), Gillis, Gingues, Hamel, Johnston, Lapalme, Lockhart, MacInnis, McIvor, Maloney, Merritt, Mitchell, Sinclair (*Vancouver North*), Timmins.

In attendance: Mr. A. MacNamara, Deputy Minister and Mr. M. M. MacLean, Department of Labour, Ottawa.

The Chairman read a letter dated 27th April from Mr. M. Lalonde, M.P., the former Chairman, conveying his sincere appreciation for the motion passed by the Committee on the 14th instant.

Copies of the following were distributed to Members present:—

(i) Memorandum, dated 4th March, 1948, presented to the Dominion Government by the Trades and Labor Congress of Canada.

(ii) Report of the proceedings of the sixty-second Annual Convention of the Trades and Labor Congress of Canada.

(iii) Letter dated 26th April, 1948, addressed to the Chairman, Committee on Industrial Relations, enclosing a copy of the Report of the Commission recently appointed to inquire into a dispute between Colonial Steamships Limited and the Canadian Seamen's Union.

(iv) A national Labour Code, February, 1948, with an explanatory memorandum proposed by the Canadian Congress of Labour.

(v) A folio of labour legislation prepared by the Department of Labour, Ottawa, enclosing:—

Canada:

(1) Industrial Disputes Investigation Act 1907.
(2) P.C. 4020 of June, 1941.
(3) Wartime Labour Relations Regulations.

Quebec:

(4) Labour Relations Act 1941 (with amendments to 1946).
(5) Public Services Employees Disputes Act 1941 (with amendments to 1946).

Nova Scotia:

(6) Trade Union Act 1947.

New Brunswick:

(7) Labour Relations Act 1945.

Saskatchewan:

(8) Trade Union Act 1944 (with amendments to 1947).

Alberta:

(9) Labour Act 1947.

British Columbia:
(10) Industrial Conciliation and Arbitration Act 1947.

Ontario:
(11) Labour Relations Board Acts, 1944 and 1947.

United States:
(12) Railway Labor Act 1926 (with amendments to 1940).
(13) War Labor Disputes Act 1943.
(14) Labor-Management Relations Act 1947.

The Chairman read a telegram that was sent to the representatives of the following organizations informing them that written representations on Bill No. 195 should be received by the Committee not later than Thursday, 6th May:

> At a meeting held 27th April the Standing Committee on Industrial Relations directed that you be requested to have any supplementary representations your organization may wish to make on Bill No. 195 in the hands of the committee before Thursday, May 6, 1948 Stop The Chairman, Mr. P. E. Coté, wrote in this connection on the 23rd April last.

Chairman,
Legislative Committee of the
Railway Transportation Brotherhoods.

General Manager,
Canadian Construction Association.

General Secretary,
Canadian Manufacturers Association.

Secretary,
Canadian Chamber of Commerce.

President,
La Confederation des Travailleurs
Catholiques du Canada, Inc.

President,
Canadian Congress of Labour.

President,
Trades and Labour Congress of Canada.

General Secretary,
Railway Association of Canada.

In reply to a letter dated 23rd April, sent by the Chairman requesting written representations on Bill No. 195, letters from the following were read:

(*a*) Dated 26th April, with enclosure—The Canadian Chamber of Commerce.

(*b*) Dated 27th April—Dominion Joint Legislative Committee, Railway Transportation Brotherhoods.

(*c*) Dated 27th April—Canadian Construction Association.

The Chairman also read communications addressed to the Honourable C. Gibson, Secretary of State:

(*a*) Letter dated 23rd April, 1948, from the Chairman of the Dominion Section of the Canadian Bar Association on Industrial Relations and Labour Law expressing his views on Clause 32, Sub-Clause 8 of Bill No. 195.

(*b*) Telegram dated 27th April from the Secretary-Treasurer, Canadian Seamens Union stressing the need of a strong labour bill.

The Chairman stated that a number of communications had been received from engineering organizations and other interested individuals referring to Clause 2 (1) (*i*) of Bill No. 195. A suggestion by Mr. Croll that these be referred to the Steering Committee for tabulation was concurred in.

Clause by clause consideration was commenced of Bill No. 195.

Clause 1.

Stand.

Clause 2.

(1) (*a*), (*b*) and (*c*) carried.

(*d*) Mr. Gillis moved that paragraph (*d*) be deleted and the following be substituted.

"collective agreement" means an agreement in writing between an employer or a group of employers, or an employers' organization acting on behalf of an employer, on the one hand, and a bargaining agent of his employees, on behalf of the employees, on the other hand, containing terms or conditions of employment of employees, with reference to any matter pertaining to rates of pay, hours of work, the check-off or union security;

Debate followed.

And the question being put, it was resolved in the negative.

Mr. Croll moved that (*d*) be amended by adding to the last line the following words:

"or other working conditions."

And the question being put, it was resolved in the negative.

On motion of Mr. Adamson,

Resolved,—That paragraph (*d*) be amended to read as follows:

(*d*) "Collective agreement" means an agreement in writing between an employer or an employers' organization acting on behalf of an employer, on the one hand, and a bargaining agent of his employees, on behalf of the employees, on the other hand, containing terms or conditions of employees *and including provisions with reference to rates of pay, and hours of work.*

(*d*) As amended, carried.

(*e*), (*f*) and (*g*) carried.

(*h*) Mr. Gillis moved that the word "industrial" in the first line be deleted and the word "labour" be substituted.

And the question being put, it was resolved in the negative.

(*h*) Carried.

(*i*) Stood over.

(*j*), (*k*), (*l*), (*m*), (*n*), (*o*), (*p*), (*q*) carried.

On motion of Mr. Gillis,

Resolved,—That paragraph (*r*) be amended to read as follows:—

(*r*) "trade union" or "union" means any organization of employees formed for the purpose of regulating relations between employers and employees *but shall not include an employer-dominated organization;* and

(*r*) As amended, carried.

(*s*) (2) and (3) carried.

Clause 3

Carried.

Clause 4

Carried.

Clause 5

Carried.

Clause 6

Carried.

Clause 7

Carried.

Clause 8

Carried.

Clause 9

(1) Carried.
(2) Stood over.

On motion of Mr. Adamson,

Resolved—That the hours for future meetings of the Committee be 10.30 a.m. to 12.30 p.m.

The Committee adjourned at 12.55 o'clock, p.m. to meet again on Tuesday, 4th May, at 10.30 o'clock a.m.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

House of Commons,
April 29, 1948.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Chairman, Mr. Paul E. Cote, presided.

The Chairman: Order please. As you will notice, gentlemen, the clerk is distributing now copies of a memorandum dated March 4, 1948 presented to the dominion government by the Trades and Labour Congress, a report of the sixty-second annual convention of the Trades and Labour Congress; a report of the commission appointed to inquire into the dispute between the Colonial Steamship Limited and the Canadian Seamen's Union. There is also the National Labour Code with explanatory notes produced by the Canadian Congress of Labour.

Now I have a letter here from Mr. Maurice Lalonde, M.P., addressed to the chairman:—

April 27, 1948.

Mr. Paul Emile Cote, M.P.,
Chairman,
Industrial Relations Committee,
House of Commons,
Ottawa.

Mr. Chairman,

I beg to acknowledge receipt of your letter of April 9, for which I thank you and I would ask you to convey to your committee my most sincere appreciation for the resolution passed on April 14.

It is my earnest hope that it will be possible for me to again be a member of the committee next year.

Yours sincerely,

MAURICE LALONDE, M.P.

A telegram was sent on April 27, 1948 to the main labour and management organizations in accordance with the decision by the committee. It read as follows:—

At a meeting held 27th April the Standing Committee on Industrial Relations directed that you be requested to have any supplementary representations your organization may wish to make on Bill No. 195 in the hands of the committee before Thursday, May 6, 1948 stop the chairman, Mr. P. E. Cote, wrote in this connection on the 23rd April last.

J. G. DUBROY,
Clerk of the Committee.

I have received a letter from the Canadian Chamber of Commerce, which reads as follows:—

April 26, 1948.

Mr. PAUL E. COTE, M.P.,
Chairman,
Standing Committee on Industrial Relations,
House of Commons,
Ottawa, Canada.
Dear Mr. COTE:

Re: Bill No. 195

In reply to your letter of April 23, please be advised that on April 12 we forwarded to your attention, and to the attention of your committee, copies of a submission with regard to Bill No. 195. For your information I am attaching hereto an additional copy of this brief.

This latest submission varies somewhat in detail from our previous representations as we have now had additional time to give this whole matter consideration. As your committee studies this latest brief of the Executive Committee of the Canadian Chamber of Commerce, questions may arise which you feel require clarification, and we would be only too pleased to make additional representations if desired.

We greatly appreciate your courtesy in advising us that, should there be additional points concerning this bill which might occur to the Executive Committee, we can make additional representations through you. Please be assured that we are most anxious to co-operate with your committee in this connection.

Yours sincerely,

W. J. SHERIDAN,
Assistant Secretary.

I have here another letter from the Dominion Joint Legislative Committee, Railway Transportation Brotherhoods, dated April 27, 1948 which reads as follows:—

April 27, 1948.

Mr. PAUL E. COTE, M.P.,
Chairman,
Standing Committee on Industrial Relations,
House of Commons,
Ottawa.
Dear SIR:

Re: Bill 195—An Act to provide for Investigation, Conciliation and Settlement of Industrial Disputes—

This will acknowledge receipt of your letter of the 23rd instant, addressed to Mr. A. J. Kelly, Chairman of the Dominion Joint Legislative Committee of the Railway Transportation Brotherhoods, advising that the House of Commons' Standing Committee on Industrial Relations would resume its sittings on April 27 to consider the above bill.

The letter referred to the representations made by the Dominion Joint Legislative Committee before your Standing Committee at the last session on an almost identical bill, and suggested that if we had any additional representations to make on points which we had not already covered, which would be of assistance to your committee, you would appreciate having same forwarded in order that they might properly be brought to the attention of the committee.

In reply would say that the letter referred to has been considered by this joint committee and we are directed to advise that a review of Bill 195, in comparison with former Bill 338 (the principles of which were endorsed by the Dominion Joint Legislative Committee of the Railway Transportation Brotherhoods on July 2, 1947) reveals but few changes which are not of material difference to the extent of warranting further representations by this committee.

Respectfully submitted,

J. B. WARD,
Secretary.

I shall now read a letter from the Canadian Construction Association dated April 27, 1948.

April 27, 1948.

Paul E. Cote, Esq., M.P.,
Chairman,
Standing Committee on Industrial Relations,
House of Commons,
Ottawa, Canada.

Dear Mr. Cote: Re: Bill No. 195, an Act to provide for the investigation, conciliation and settlement of industrial disputes.

Thank you for your letter of April 23 inviting our association to make any additional representations regarding bill 195. As you point out, this bill is almost identical with the one presented to the House of Commons as bill No. 338 last year. Under the circumstances, the representations which we made to your committee under date of June 30, 1947, would apply equally to the present bill.

As we then pointed out, this legislation will not apply to the construction industry except in those provinces which see fit to pass implementary legislation. Our view is that the bill contains basic principles on which sound labour relations can be established. Experience under the legislation after it becomes law may suggest the desirability of revision from time to time.

We favour national uniformity in labour legislation of this kind. As it appears likely that the bill will be implemented by a number of the provinces for the purpose of providing such uniformity, we feel that occasions may arise when employers and employees will wish to be given the opportunity of making representations to such provinces. In such an event, the representations would concern local conditions which would call for amendment or revision in matters of detail without interfering with basic uniformity.

May I thank you on behalf of our association for the opportunity you have afforded us to comment on this legislation.

Respectfully submitted,

CANADIAN CONSTRUCTION ASSOCIATION,
(Sgd.) R. G. Johnson,
General Manager.

Mr. Case: Mr. Chairman, may I interrupt for a moment? I do not think this correspondence is going to be of much use to the present issue, so I wonder if we could not preface it or summarize it and put it on the record, because it is going to take a good deal of time to read it?

The Chairman: I was going to make that suggestion at this point. I think it would be well to give in extenso the replies of the labour management groups to whom I had written last week. Your suggestion, Mr. Case, would apply in this case. I have a letter which I received from the Hon. Colin Gibson enclosing a one-page brief from Mr. Cecil W. Robinson, chairman of the dominion section of the Canadian Bar Association on industrial relations and labour law and dealing exclusively with section 32(8) of the bill. We could place this on the record.

Hon. Mr. Mitchell: I think that should be made a part of the record.

Mr. Croll: It is being made a part of the record.

The Chairman: I have here a telegram from T. G McManus, secretary-treasurer of the Canadian Seamen's Union, which is very hard to paraphrase.

Mr. Timmins: Mr. Chairman, if you are going to read one I think you should read the others, otherwise there is no justice or equity. If you are going to read this one I ask you to read the one which you had before and which I as a lawyer passed over.

The Chairman: We had in the record last year the case for the legal profession under section 32(8). This brief which I have just referred to is substantially the same as the evidence which we have on the record. That is why I did not insist on having it read at this time. It will be printed in the record in extenso.

THE CANADIAN BAR ASSOCIATION
6 James St., South, Hamilton, Ontario.

April 23, 1948.

The Honourable Colin Gibson,
Secretary of State,
Parliament Buildings,
Ottawa, Canada.

Dear Sir:

I am writing you in two capacities, firstly as a member with you of the Law Society of Upper Canada, and secondly in my position as chairman of the Dominion Section of the Canadian Bar Association on Industrial Relations and Labour Law. I am writing you, not in your capacity as Secretary of State, but in your position as a member of the Law Society of Upper Canada.

Bill 195, which has had its second reading in the House, and which is going to the parliamentary committee for consideration, is an Act to provide for the investigation, conciliation and settlement of industrial disputes. Section 32(8) reads as follows, "In any proceedings before the conciliation board no person except with the consent of the parties shall be entitled to be represented by a barrister, solicitor or advocate and, notwithstanding such consent, a conciliation board may refuse to allow a barrister, solicitor or advocate to represent a party in any such proceedings."

I would bespeak your efforts as a member of the cabinet to point out to your fellow members of the cabinet and to the fellow members of your political party in the House, who are not lawyers, the very dangerous precedent which would be established if this section 32(8) is permitted to stand in the bill as enacted.

If it is enacted, then you and I as members of the Law Society of Upper Canada in good standing, would be refused permission to appear for a client before a conciliation board, while each and every disbarred lawyer would have a perfect right to appear before a conciliation board. It might be much more appropriate to enact section 32(8) in the form where no barrister, solicitor or advocate who has been disbarred from practising shall be entitled to appear before a conciliation board.

There are many other arguments which can be advanced why this section should not stand, but it suffices for me to say that, in my opinion, the right of a Canadian citizen to be represented by legal counsel of his own choice before any court, or before any body performing judicial or quasi-judicial functions, is one of the fundamental bulwarks of our democracy; and that this right should not be infringed upon under any circumstances.

I would, therefore, bespeak your assistance in the matter as fellow members of the Law Society of Upper Canada. I know that both of us have a sincere pride and respect in and for our profession.

Yours sincerely,

(Sgd.) CECIL W. ROBINSON.

Now, this is a new matter. This is a telegram dated April 27, 1948, and is addressed to the chairman, and reads as follows:

Montreal, Que., April 27, 1948.

We wish to refer you to Brockington McNish report dealing—

Hon. Mr. MITCHELL: Mr. Chairman, when we come to that, if it deals with this report all right, but if it does not—

The CHAIRMAN: It does.

Hon. Mr. MITCHELL: It deals with amendments to the bill.

The CHAIRMAN: The last line refers to this bill.

—with violations PC 1003 by certain shipping companies page six we are unanimous in stating our belief that the defiance of the existing law the breach of the existing agreement and the failure to fulfil the promise made by these companies to the government are a serious threat to the recognized practice of labour conciliation etc. Urge your committee recommend teeth in new labour bill to deal with companies who defy law.

T. G. McMANUS, *Secretary-Treasurer,*
Canadian Seamen's Union.

Now, the balance of the correspondence which I have received since last Tuesday concerns the case of the Professional Engineers. I imagine the committee would not be interested in having each of these telegrams and letters read. What would be your pleasure?

Mr. CROLL: File it and record it.

Mr. CASE: I think we could hear a statement as to who wrote them and then have them put in the record. Then, we would have an idea who is appealing.

Mr. CROLL: Is this from the engineers?

The CHAIRMAN: Yes.

Mr. CROLL: May I suggest, with respect, that I have had a telephone call from Mr. Fleming from Toronto to the effect that the engineers have not a brief ready as yet. This correspondence could be held until the brief is ready and it could all be put on the record together.

Mr. GAUTHIER: Yes, keep it all together.

The CHAIRMAN: Is the whole committee agreeable to this suggestion?
Agreed.

Hon. Mr. MITCHELL: Perhaps, with regard to these telegrams, to save the time of the committee my department could review them and make a summary of the contents. Perhaps it could be made a part of the record and it would save a great deal of trouble.

The CHAIRMAN: You mean have a short summary made right now?

Hon. Mr. MITCHELL: We could do that.

Mr. TIMMINS: A summary for and against?

Hon. Mr. MITCHELL: Yes.

Mr. CROLL: I see no objection to it from our point of view, but we may run into an objection from the fellow who loses. If a fellow sent in a brief and the pertinent points were left out, he may not think we were quite fair.

Hon. Mr. MITCHELL: These wires are continually coming in. I think both briefs should be printed. I think they should be made a part of the record at the same time, so one does not have to turn back the pages to see what was said. If we are going to take up our time reading hundreds of wires, which may not even be from engineers, we will waste a lot of time.

Mr. MACINNIS: Mr. Chairman, I think it would be better if we left this situation to our steering committee. Then, the steering committee could get whatever help it wants from the department. So far as this committee is concerned, we better leave the tabulation to the steering committee.

Mr. CROLL: Carried.

The CHAIRMAN: Would you change your motion accordingly, Mr. Croll.

Mr. CROLL: Yes, surely.

The CHAIRMAN: Now, gentlemen, before we start the bill, I had prepared, with the valuable assistance of the department, a summary of the Canadian legislation on labour relations, as well as the United States legislation. I would ask the clerk to distribute these documents at this time.

This folder includes labour legislation in Canada, the province of Quebec, Nova Scotia, New Brunswick, Saskatchewan, Alberta, British Columbia, Ontario and the United States. I hope this will be of some assistance to the members. Order, please.

Bill 195. An Act to provide for the investigation, conciliation and settlement of industrial disputes.

PART I.

INTERPRETATION

2. (1) In this Act, unless the context otherwise requires,

(*a*) "Board" means the labour relations board established to administer this Part;

Should clause (*a*) carry?

Carried.

(*b*) "bargaining agent" means a trade union that acts on behalf of employees

(i) in collective bargaining; or

(ii) as a party to a collective agreement with their employer;

Carried.

(*c*) "certified bargaining agent" means a bargaining agent that has been certified under this Act and the certification of which has not been revoked;

Carried.

(*d*) "collective agreement" means an agreement in writing between an employer and an employers' organization acting on behalf of an employer, on the one hand, and a bargaining agent of his employees, on behalf of the employees, on the other hand, containing terms or conditions of employment of employees that include provisions with reference to rates of pay and hours of work;

Mr. Croll: Mr. Chairman, before that is carried I have one observation to make on it. I think the crux of the definition in the present clause is in the last couple of words; rates of pay and hours of work. My suggestion to the committee is that in modern circumstances that is too narrow, because I should think the reading of it would almost limit it to those two things. There are more things than that in a moderate collective binding agreement that become very important. The employer, for instance, may very well take the position that he is limited in fact—although I do not entirely agree that he is—to rates of pay and hours of work. Today the bargaining agreement has to deal with and does deal with such things as vacations with pay; it deals with holidays; it deals with sickness and benefits; and, as a matter of fact, it deals with pensions. That is all part of a collective bargaining agreement, whatever agreement they reach. And I think we ought to make our definition realistic. We know what the conditions are, and there is no use hiding behind it; that is what they bargain about. It may not include everything. We may leave something out, mind you; but we will correct it at a later date. In any event, we ourselves know that there is more to a collective agreement than just rates of pay and hours of work; and some of the provinces have already gone a little further than that in doing it. For instance, in the Saskatchewan Act there is the matter of checkoffs; but that is another matter entirely. They are dealing with union security; which is perhaps another matter on which they often negotiate. So that I think particularly that reference should be broadened to include these things which we know actually and realistically exist.

Mr. Johnston: I agree with that. I think the reference there is too limited and could not possibly be extended to include everything in the collective agreement.

Hon. Mr. MITCHELL: All right, let's read it.

Hon. Mr. MITCHELL:

> "collective agreement" means an agreement in writing between an employer or an employers' organization acting on behalf of an employer, on the one hand and a bargaining agent of his employees on behalf of the employees, on the other hand, containing terms or conditions of employment of employees that include positions with reference to rates of pay and hours of work;

That covers the water-front, I think.

Mr. JOHNSTON: Yes, that includes all those above mentioned things you have spoken or would be almost confined to these references on rates of pay.

Hon. Mr. MITCHELL: No.

> . . . acting on behalf of an employer, on the one hand, and a bargaining agent of his employees, on behalf of the employees, on the other hand, containing terms and conditions of employment . . .

That includes provision with reference to rates of pay and hours of work. I think that covers it.

Mr. JOHNSTON: I think it could be a little more inclusive to make definitely sure that it includes all these things which we have been speaking about, rather than to have it left, to be a debatable point afterwards.

Mr. CROLL: May I answer the Minister's question. To a great extent, what you are doing there, on that particular section, is leaving yourself open to continual wrangling.

That section is almost the same as the American section. Last week the National Labour Board in the United States rendered a decision which said welfare and pension benefits were matters for collective bargaining and that it was inclusive; and that was done after a great number of complaints and hearings. They finally rendered that decision indicating that it was all inclusive. My suggestion is that, if it is all contained, we leave it, and amongst others the following, and we may have left something out. Something else may come up but not limiting it. We would save ourselves a great deal of trouble.

Hon. Mr. MITCHELL: I have had some experience with negotiations as to this and many other things and I think that conditions of work and employment cover anything.

We have seen the evolutionary development of collective agreements. In my young days we were opposed to pension plans, but today I think they are readily understood to be a condition of employment. I would not make it too protective or too restrictive because, if you eliminate everything, you may, in the distant future, leave out something which may develop as a condition of employment. The trade unions and the trade unionists of this country—they know what conditions of employment are. I just leave that thought with you.

Take, for instance, the check-off. That is a condition of employment. The closed shop is a condition of employment and many of these things such as holidays with pay—in my judgment, those are conditions of employment. But we did, in addition to that, want to state specifically hours of labour and rates of pay. That is the generally accepted language.

Take, recently, in your province, Mr. Johnston, where they had a dispute between the miners and employers, the mine operators in Alberta. One of the conditions of the mining industry in Alberta is the welfare fund. Twenty years ago, if you talked about the welfare fund, there was no such a thing. But it has developed into a condition of employment and I think the more you take in that section, the easier it is.

Mr. JOHNSTON: Could we not make another section which would define what we mean by conditions of employment?

The CHAIRMAN: Order, please.

Mr. GILLIS: I agree with Mr. Croll. While the Minister may state that these things have been accepted in the past, that may be quite true, but it seems we are laying down a guide now for employers and employees which is going to be adhered to; and in this clause as it now stands, I think that Mr. Croll's fears are well grounded: that any employer, when negotiating an agreement with his employees can restrict that agreement to hours of labour and rates of pay, if this code is adopted as that section now reads. I think the Minister is not quite correct when he says that this wording is acceptable to organized labour.

The Canadian Congress of Labour in their brief, in Section E, write a clause which is acceptable to them, and it goes on in pretty much the same wording as this one: and it winds up, I think, by saying:

> ....on the other hand, containing terms or conditions of employment of employees, with reference to any matter pertaining to rates of pay, hours of work, the check-off or union security.

Those are definitely in the scheme of things today. They are matters of collective agreement and in almost every industry in Canada during the war, most of our difficulties arose out of that very question, union security and the check-off. The fights were not about hours of labour and working conditions. So I think we would be well-advised, and we would save a lot of time, if we accepted clause (*e*) of the draft labour code of the Canadian Congress of Labour and substituted it for clause (*d*) in the draft bill No. 195. I think most of that wording is absolutely necessary under the present scheme of things.

Mr. SINCLAIR: I would suggest that this clause (*d*) amounts to falling between two stools. If it embraces all conditions of employment, you must leave it at that or go ahead and name them. And, as things stand at present, the third line from the bottom:—

> conditions of employment of employees....

if you put a period there, there would be no doubt and it would be all embracing.

Mr. CROLL: I do not follow you.

Mr. SINCLAIR: Getting down to the last three lines, I suggest that if we place a period here, following the words "conditions of employment of employees", that it would be all embracing, that it would be in general terms. But that if you go on to name things, then you must name all the things you can think of and the result would be that you would be limiting this clause.

I can think of one union in my riding whose immediate trouble is want of a measure of union security, a union shop. They might sit down this summer to work out a collective agreement which would make no mention of hours of work or rates of pay, but under which all attention would be paid to this drive for union security. Yet this clause (*d*) says:—

> ....containing terms or conditions of employment of employees include provisions with reference to rates of pay and hours of work;....

Hon. Mr. MITCHELL: Why not put "and" there?

Mr. SINCLAIR: It has either got to be a general thing or a specific reference; or, as Mr. Croll has suggested, state every conceivable thing.

Mr. CROLL: After the words "hours of work" place the words "or other working conditions." That would seem to me to meet everybody's suggestion. It would not hurt the bill, and it would make it very general.

Mr. SINCLAIR: How does that come in?

Mr. CROLL: "....containing terms or conditions of employment of employees."

Mr. TIMMINS: If you leave the suggestion of the Minister and change the word "that" to "and", I think you have covered the water-front. You have not limited it to the two last little phrases, and at the same time you have not restricted it. I think the Minister's suggestion is a good one.

Mr. CROLL: Why not change it to read "conditions of employment of employees" and stop there with a period. Then include the words: "including provisions with reference to rates of pay and hours of work and other conditions." Does that sound repetitious?

Mr. GILLIS: I think you are leaving out the very basis of the whole business, that is, the right of the union to negotiate, in its collective agreement, for some means of union security.

The Congress suggests in their draft code, the wording which is acceptable to them. And if the Minister will remember back to the Ford strike which caused so much difficulty, it was not hours of labour which made the trouble, it was union security.

Hon. Mr. MITCHELL: I would not say that.

Mr. GILLIS: Or think of the seamen's strike?

Hon. Mr. MITCHELL: I would not say that.

Mr. GILLIS: Unless we have something in like that, as a guide, we are not really drafting a code at all.

Mr. Chairman, I am going to move that we accept the wording of clause (*e*) in the draft labour code of the Canadian Congress of Labour as a substitute for clause (*d*) in Bill 195.

The CHAIRMAN: For my own information, Mr. Gillis, I interpret Section E of the Congress of Labour Code as making valid a collective agreement which would bear only on one of the four provisions mentioned there. Take hours of work alone, for instance, because you have these words in the said clause:—

> ...with reference to any matter pertaining to rates of pay, hours of work, the check-off or union security.

So, as long as collective agreement would take in one of these four provisions, it would be a valid collective agreement. While, under Bill 195, in order to be valid, the collective agreement has to incorporate the provisions, "with reference to rates of pay and hours of work". The specific conditions to render a collective agreement valid would have to provide for rates of pay and hours of work, and any other conditions of employment, but specifically these two.

Mr. SINCLAIR: Our objection to it is that it is quite possible to have a collective agreement to which the union contributes only one thing, let us say, union security; but that would not be possible; that is not a collective agreement, because there is no mention of hours of work and rates of pay.

Hon. Mr. MITCHELL: Let us not make the mistake which has been made in other countries where we have seen what were called fundamental rights of trade unions abrogated by law. So let us think as Canadians and Britishers. I do not say that in a critical sense.

You know what has happened in the United States, where they have had closed shops in the construction industry for years and years. Yet, what have they got? The Taft-Hartley law. They have written into the law that you cannot have a closed shop.

I speak as a Canadian and I think I know the temper of the average Canadian trade unionist. This is simple language. It is language which is understood. They understand it.

The questions raised by Mr. Gillis and Mr. Croll are covered in Section 6. Let us look at Section 6.

> Section 6 (I) "Nothing in this Act prohibits the parties to a collective agreement from inserting in the collective agreement a provision requiring, as a condition of employment, membership in a specified trade union, or granting a preference of employment to members of a specified union.

Mr. CROLL: I was not talking about that.

Hon. Mr. MITCHELL: I know what you are trying to talk about; and then, subsection (2):—

> No provision in a collective agreement requiring an employer to discharge an employee because such employee is or continues to be a member of, or engages in activities on behalf of a union other than a specified trade union, shall be valid.

I think that covers the point fairly clearly. The high question of wisdom, if I may go a step further, is whether to write into legislation what is the normal function of discussion around a table. You see, it happens in other countries; but I believe the more responsibilities we put upon the parties to a dispute, taking the long view and not the short view, the better it is for the employers; the organization and the employees themselves.

Because, after all is said and done, a trade union agreement is not a legal contract. It is a contract based on character, on willingness to sit down and negotiate an agreement.

I can think of many organizations. Take the clothing trade today, the Amalgamated Clothing Workers. They had a strike, in former days, every spring in order to collect their dues. But today their organization is looked upon as an organization which does credit to both employers and employees.

The situation is like that of a child. In the early years it is difficult. The child has to learn about life through a period of slow growth. Then, as you engender confidence based upon fair dealing, you reach a stage where legislation of this character is beneficial not only to the people involved, but to the nation itself.

But when we write all these things into legislation and make them compulsory, I would question the wisdom of it. I leave that thought with you.

To those of you who are interested in a closed shop and in a check-off, I say it is absolutely permissible, as set out in Section 6. The trade unions understand what is meant by conditions of employment. They cover everything. The trade unions understand what is meant by rates of pay and hours of work. For us to write a lot of unnecessary things into the bill, might, I believe, offend.

Public interest must come first. And if you cannot be a special pleader for one side or the other, then your responsibility is to adopt the view point of both parties and endeavour to fashion something which will be fair to both sides of the dispute, to those vitally interested in legislation of this description.

If we are going to keep on quoting organizations—I am not saying this in a critical sense—we should cite the railroad organizations which are, probably, the best run organizations in the Dominion of Canada, and they have endorsed this. Then we have the construction industry. It has had a closed shop for fifty years; and they have endorsed this; and the Trades and Labour Congress.

I think we should keep to the middle of the road, try to be fair to both parties to the agreement, and not write too much into this bill which will offend one side or the other.

One might think it would work admirably, but there is no legislation in any country at any time which is one hundred per cent successful. I am not a lawyer, but it has been said that bad law rather than good law is the exception to the rule.

Mr. SINCLAIR: Taking up Section 6 as well as Section 2(*d*), before a collective agreement would be valid, there would have to be a reference to pay and hours of work. Now, let us consider the case of a union who might say, this summer, that they wanted to alter their present contract only with regard to union security or the check-off. Whether it be a closed shop does not matter. Can they make an agreement which would be binding under clause (*d*), purely as to those two things?

Hon. Mr. MITCHELL: Absolutely!

Mr. SINCLAIR: Nevertheless it says:—

> ...that includes provisions with reference to rates of pay and hours of work.

and in Section 6, with regard to a collective agreement which has to do with hours of work and rates of pay, you can include union security; but can you negotiate an agreement only which would have union security?

Hon. Mr. MITCHELL: Absolutely!

Mr. SINCLAIR: Well, I do not see that.

The CHAIRMAN: Order. Mr. MacInnis?

Mr. MACINNIS: I think we should keep ourselves to the point here and try to find the proper wording for this agreement. The mere fact that the railroad brotherhoods or other organizations have endorsed this does not mean anything. Railroad brotherhoods are a sheltered employment and not in the same position at all as the ordinary run of employees in an industry where they have not the same conditions.

I think that what is required here—and I think I am in general agreement with both the Minister and Mr. Croll—is a section which would not exclude any condition of employment that may be put into an agreement. We know that new conditions are being put into agreements all the time. They are growing, as the Minister has pointed out. More things are coming up, but I think this one word excluded, as it is at present worded, certain things in an agreement, and I believe the same things applies in Section E of the Congress bill. It takes about two or three lines:

> ....with reference to any matters pertaining to rates of pay, hours of work, the check-off or union security.

That is, in my opinion, the same limitation as shown in section (*d*) of Bill 195. I would delete the word "that" and substitute the word "and."

Hon. Mr. MITCHELL: Cut it off at employees and leave "conditions of employment"; include "conditions."

Mr. MACINNIS: "Containing terms and conditions of employment." I think that hours of work and rates of pay are conditions of employment. That satisfies me.

Mr. JOHNSTON: When you peruse the national labour code as set out by the Congress, you will find that it is in almost identical words with Bill 195, with this exception: that they have added the words "check-off or union security."

I believe the limitation is just as great in the case of the labour code, from the union, as it is in Bill 195; so I would take exactly the same objection to it.

I must say that I agree with Mr. Croll's suggestion there. I think it would be more inclusive and would meet with better satisfaction both with respect to this committee and the unions, if we could have it changed: starting with line 22 and say:—

> This includes provisions with reference to rates of pay and hours of work or other working conditions.

I do not see any particular necessity for having either rates of pay and hours of work. I think that is unnecessary. Without changing the wording of Bill 195, I would leave it as it is and change the word "that" to "and"; and then it would read:—

> ....provisions with reference to rates of pay, hours of work, or other working conditions.

Respecting section 6, to which the Minister referred a moment ago—he said, bearing that section in mind, that would clarify section (*d*) and would include the very things that are being suggested now.

If the Minister will permit me to say this: I think that section 6, if you leave it at that and refer it to subsection (*d*) without addition of the word suggested, I think you are limiting it more because, in section 6(1), that is defining what your conditions of employment are; and it limits it more than it did before. So I think that we should not limit the section but that we should add, or rather change the word "that" to "and", and add the words "or other working conditions."

Then I would see no objection, and I think the Minister would agree to that because it would be embracing the very thought he has expressed just now. I do not think it would interfere with the bill in any way, because, as the Minister has pointed out, that is the intent and purpose of the bill, to include some other conditions, and it seems to me that it would be making it clearer to both the government, to the members of this committee and to the unions

Mr. CASE: I have only one observation to make. I have been trying to follow the arguments as presented, but it does seem to me that the more specific we try to make this bill, the more restricted it is going to be.

I would be prepared to go along with the Minister and with Mr. MacInnis and put a period after employment. I see no objection to doing that. I do not think we should try to be too specific. If we do, then we are being restrictive. I do not think we should start to enumerate too many things, when the clause itself is a pretty wide provision.

Hon. Mr. MITCHELL: Section 6 was put in there to protect the very rights which Mr. Gillis spoke of. That section was deliberately put in there as the result of experience.

Mr. GILLIS: But it does not protect them. It does not mean anything. There is nothing in the bill which protects them.

Mr. ARCHIBALD: I would like to say that I am in support of Mr. Gillis and I think that the major fight at the present time, where the blow-ups will come in industry, is over the check-off in industry, where most industries have been organized in recent years. I would like to see Bill 195 include a provision with reference to rates of pay, and hours of work, and the check-off, and union security.

Mr. TIMMINS: I am going to move.

The CHAIRMAN: There is a motion already before the chair from Mr. Gillis.

Mr. ADAMSON: Surely the wording "conditions of employment" covers everything. The difficulty which I see being raised is in the wording of the last sentence. I would suggest that it be altered to read this way: Terms or conditions of employment of employees. Cross out "that" and use instead the word "include", or "including provisions with respect to rates of pay and hours of work", so that it will read: "conditions of employment of employees including provisions with reference to rates of pay and hours of work".

The CHAIRMAN: This cannot be made a motion at this time. It is just in the way of a suggestion, Mr. Adamson?

Mr. ADAMSON: Yes; just in the way of a suggestion. I can make a motion, but I understand you cannot have two motions at the same time. But I want to make that suggestion to the Minister and see if it would satisfy him.

Mr. Croll: The observation made by Mr. MacInnis and some of the other speakers with reference to the bill of the Canadian Congress of Labour, I think are good observations in my opinion, but I think they limit it. I think they are limitations.

Mr. Gillis: Let me ask you this question: How can you limit a thing by including the words "union security and check-off?" Doesn't that explain it?

Mr. Croll: What we are trying to do is to make it as general as possible. You would be limiting it by including, for instance, "specific welfare fund".

Mr. Gillis: Not necessarily.

Mr. Croll: What we are trying to do is to be general, and I suggested working conditions. Mr. Johnston found favour with that, but I think perhaps Mr. Adamson's suggestion is better than the one which is here, because it seemed to me to be more inclusive. The more general we can make it, the better. There are such things as sickness benefits and holidays, but what I am trying to do is to emphasize that there is more to an agreement than hours of work and rates of pay. I do not know how far afield that goes.

Mr. MacInnis: If we take the position that the check-off or union security is excluded because it is not specifically in the bill, then those other things mentioned by Mr. Croll are also excluded, such as holidays with pay, welfare fund, and so on; and it is impossible to think of the many things that may come up in the future. So I think the best way is to leave it wide open.

Mr. Gillis: That is exactly what I am not trying to do and I think I have negotiated as many agreements for check-off and union security as any man sitting about this table. You do not draft your Criminal Code in a way that is wide open and ambiguous. But rather you lay down definite rules of law whereby a judge can render a decision.

Mr. Gauthier: But these people are not criminals!

Mr. Gillis: Any one who has to do with labour problems in this country knows full well that for the last ten years your labour difficulties were on account of union security and check-off in your union agreement, and that caused all your difficulties.

I know what we went through in Nova Scotia with respect to coal and steel, and I know it was not until we had the right by law to write the check-off into our trade union act in that province that we settled those difficulties. It became a rule of law. So now, should you go to your employer and suggest writing in a measure of union security into your contract, his answer would be: "Sure; far be from me to dispute the law."

It is a rule for him to go by. And the problem was solved in my province in that way, at least, by writing the very words which the Congress now want to have written into this national labour code. And until you do so, you will not settle labour relations in this country.

Mr. MacInnis: Is it your contention that the check-off or union security will be compulsory in a labour agreement if the words are included here?

Mr. Gillis: Not compulsory, but the right for the negotiators to settle that question.

If Mr. Drew, for example, accepted this labour code before he saw it and made it applicable to every industry in this province—if it goes out in an ambiguous way, and if we decide to accept this clause here, in this province of Ontario, where there is still a terrific organizing job yet to be done in the field of labour, management would say that there is nothing in the national labour code which indicates that we should write union security into collective agreements.

There are strikes underway to-day on that very point, and the Minister himself knows that until such time as we get down to business and write something definite, it won't be satisfactory. I am not attacking any particular organization, inasmuch as the Congress of Labour, who are affected most, and who represent more than 200,000 workers in the country, have decided that wording was necessary, and they wrote it into this clause.

The people who are affected are not the sheltered trades. They are quite all right. I am supporting the wording arising out of my own experience because I know there would not be much difficulty in this country, for a good many years, in negotiating wage rates or conditions.

Welfare is not a national thing at all. It is a provincial matter. Right now workers have been sitting in with their provincial governments trying to strike some kind of actuarial basis. It will vary from province to province. There cannot be included in this kind of thing such matters as vacations with pay, or holidays with pay.

But it was not until such time as the government wrote legislation on it—and there is no legislation now except in the provinces, where they have provincial governments. When this code becomes a national code and is accepted in the provinces—and Mr. Drew has accepted it—then, it is absolutely necessary that the wording of the provincial code be carried forward in this national code.

Mr. Merritt: I find in the Nova Scotia statutes that the wording of this clause is identical with the wording of Bill 195 here. Mr. Gillis is satisfied with the Nova Scotia wording, yet the wording here is identical.

Mr. Lockhart: Would the Minister be satisfied if the words read: "containing terms and conditions of employment", and stop right there? Then "terms and conditions", if you leave the word "or", there is a little limitation by inference. I am prepared to support the wording: "containing terms and conditions of employment" if the Minister feels that will cover it.

Hon. Mr. Mitchell: Anything which does not restrict the purpose. After all is said and done, an agreement is not an agreement until it is signed. So it may include anything. Once you start to put those things on paper, you begin to make it restrictive; do not forget that. Mr. Gillis said that there are strikes on all over Ontario. To my knowledge, there is not a strike in Ontario.

Mr. Gillis: What about the Berthram Company, on this very question?

Hon. Mr. Mitchell: I know whereof I speak. It is not anything that you make it. I am agreeable there.

The Chairman: Order!

Mr. Merritt: Three of these provincial bills contain the words "rates of pay and hours of work and other conditions of employment." One of them contains the same wording as Bill 195, of the four which I have looked at. It might be that we could take the wording of the majority of the provinces. That might meet Mr. MacInnis' objection.

Mr. Croll: I will move an amendment to Mr. Gillis' motion. After the word "work"....

The Chairman: Pardon?

Mr. Croll: After the word "work" in line 24, the words "of other working conditions" be added. That will be an amendment to the motion which you have before you. That ought to suit everyone. Mr. Johnston will second it.

The Chairman: I do not think I can accept your suggestion as a sub-amendment because the main motion calls for the complete deletion of clause (*d*) and a substitution therefor by clause (*e*) of the Congress Code. So I should think we should vote on this motion.

Mr. Gillis: And then it will be open to you to make your motion as a main motion.

Mr. Johnston: Was Mr. Gillis' motion seconded?

The Chairman: There is no necessity for it being seconded.

Mr. SINCLAIR: Was not there a motion to put a period in after the end of employees?

Mr. TIMMINS: We will have to vote on Mr. Croll's motion.

The CHAIRMAN: I think so. It is moved by Mr. Gillis that subsection (*d*) of section 2 of Bill 195, be deleted, and that the following be substituted therefor, that is, subsection (*e*) of the Congress Labour Code. Should I read it to you?

Mr. CROLL: No, we have got it.

The CHAIRMAN: All those in favour of the motion will please raise their hands? Those against? I declare the motion defeated, Mr. Croll.

Mr. CROLL: I shall move my amendment now; or rather, it does not become an amendment, it becomes a motion. My motion is that after the words "hours of work", there be added these words: "or other working conditions." You have heard the argument and I am not going to say anything more about it.

Mr. MACINNIS: Before you put the motion, there were two or three suggested amendments made. One was made, I think, by the Minister or by Mr. Sinclair, that the section end with the word "employees." Then there was a suggestion made, I think, by Mr. Adamson, which I thought was a very good one, to substitute "and" for "that", and "including provisions." I thought that would work.

Mr. SINCLAIR: What about "and may include"?

Mr. CASE: I think before we vote on Mr. Croll's amendment, we should consider Mr. Adamson's suggestion to take that out entirely and change "include" to "including". I think that covers the whole thing, and it is not restricted.

The CHAIRMAN: Have you any questions, Mr. Croll.

Mr. CROLL: No, let us get on with it, one way or the other; it won't make any difference.

The CHAIRMAN: Now, we have before the Chair a motion by Mr. Croll that the following words be added to the end of subsection (*d*): "or other working conditions."

Mr. LOCKHART: Are we leaving in any reference to rates of pay and hours of work?

The CHAIRMAN: Yes. The motion is that the following words be added, at the end of subsection (*d*): "or other working conditions."

Are you ready for the question, gentlemen? All those in favour of the motion will please raise their hands? And those against?

I declare that the motion is defeated.

Mr. ADAMSON: Well, the suggestion I made was: I moved that the words "or conditions of employment of employees including provisions with reference to rates of pay and hours of work".

Mr. ARCHIBALD: Would it be all right to add to that: "the check-off and union security"?

The CHAIRMAN: Order. Mr. Adamson, if I interpret your views correctly, all the words after the word "employees" in line 22 would be deleted and replaced by the following:—

> . . . including provision with reference to rates of pay and hours of work.

Mr. ADAMSON: That is all. Stop.

Mr. SINCLAIR: Before that motion is put, I again say that any collective agreement about union security or check-off would contain those same references to hours of work and rates of pay.

Hon. Mr. Mitchell: Let us suppose that an agreement is consummated which has got to be signed at the end of the year. By the very nature of things they must include hours of work and rates of pay in that agreement.

Mr. Adamson: You could not conclude an agreement without including hours of work and rates of pay.

The Chairman: All those in favour of the motion will please raise their hands? Those against?

I declare the motion carried.

Mr. Gillis: The question boils down then to a question of hours of work and rates of pay.

The Chairman: Order. Now we come to subsection (*e*):

> (*e*) "collective bargaining" means negotiating with a view to the conclusion of a collective agreement or the renewal or revision thereof, as the case may be; and "bargaining collectively" and "bargain collectively" have corresponding meanings;

Does the subsection carry?
Carried.

Subsection (*f*)

> (*f*) "Conciliation Board" means a Board of Conciliation and Investigation appointed by the Minister in accordance with section twenty-eight of this Act;

Does the subsection carry?
Carried.

Subsection (*g*)

> (*g*) "Conciliation Officer" means a person whose duties include the conciliation of disputes and who is under the control and direction of the Minister;

Does the subsection carry?
Carried.

Subsection (*h*)

> (*h*) "dispute" or "industrial dispute" means any dispute or difference or apprehended dispute or difference between an employer and one or more of his employees or a bargaining agent acting on behalf of his employees, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done by him or by the employee or employees or as to privileges, rights and duties of the employer or the employee or employees;

Does the subsection carry?

Mr. Gillis: There is one word there which I think should be changed and that is the word "industrial". There are many disputes in this country which are not industrial disputes. For example, take your clerks, or your bank employees. Those people are all organized today in unions and will, in the future have difficulties; so I think that the word "industrial" dispute should be changed to trade dispute or to industrial and trade disputes, because you are limiting that particular class there to industrial disputes.

The Chairman: Do you intend to make a motion about this, Mr. Gillis?

Mr. Croll: What is the objection to that?

Mr. Gillis: I would just say "disputes", and it all would be in.

Mr. Croll: It seemed repetitious to me.

The Chairman: Are you making a motion about this, Mr. Gillis?

Mr. Gillis: I move an amendment, that the words "industrial dispute" be changed to "labour disputes".

Hon. Mr. Mitchell: That term has existed since 1907 and has never given any trouble. We should be careful not to get mixed up with political disputes. I think if we say "disputes" or "industrial dispute" everybody understands what that means. But, as we have seen in Europe, they have entirely different kinds of disputes, and not only in Europe, but in other countries.

The Chairman: I have a motion before me that the words "industrial dispute" be changed to read "labour dispute". Are you ready for the question? All those in favour of the motion will please raise their hands? Those against? The motion is defeated.

Mr. Adamson: I would like to ask the Minister here about "apprehended dispute" in line 5; and I think there is another reference to it. Would the Minister comment? Apparently this section deals with the possibility of apprehended or future disputes between employers and employees. Why was that put in? Is there a very special reason for it?

Hon. Mr. Mitchell: I think there is a very special reason. A good many disputes never reach the stage of a dispute. Quite often employers will ask me to send in a conciliation officer, and quite often trade unions will do the same thing. But it is not a dispute until it is a dispute. What you must have is the power either to put a conciliation officer in there or a commissioner. That is where "apprehended dispute" comes in. A conciliation board under the law cannot be established until conciliation has failed; and until it is a dispute it is an "apprehended dispute." That is legal language which I use.

Mr. Sinclair: When does the apprehension start, when one of the parties asks your department for help?

Hon. Mr. Mitchell: You cannot be dogmatic about it. My people report to me that they think the best thing to do is to put a conciliation officer in.

The Chairman: Does subsection (*h*) carry?
Carried!

Then, subsection (*i*).

(*i*) "employee" means a person employed to do skilled or unskilled manual, clerical or technical work, but does not include

(i) a manager or superintendent, or any other person who, in the opinion of the Board, exercises management functions or is employed in a confidential capacity in matters relating to labour relations;

(ii) a member of the medical, dental, architectural, engineering or legal profession qualified to practise under the laws of a province and employed in that capacity;

Mr. Croll: Let subsection (*i*) stand, please.

The Chairman: Subsection (*j*).

(*j*) "employer" means any person who employs one or more employees;

Does this subsection carry?
Carried!

Subsection (*k*)

(*k*) "employers' organization" means an organization of employers formed for purposes including the regulation of relations between employers and employees;

Does this subsection carry?
Carried!

Subsection (*l*)

(*l*) "lockout" includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of his employees, done to compel his employees, or to aid another employer to compel his employees, to agree to terms or conditions of employment;

Does this subsection carry?
Carried!

Subsection (*m*)

(*m*) "Minister" means the Minister charged with the administration of this Act;

Does this subsection carry?
Carried!

Subsection (*n*)

(*n*) "parties" with reference to the appointment of, or proceedings before a Conciliation Board means the parties who are engaged in the collective bargaining or the dispute in respect of which the Conciliation Board is or is not to be established;

Does this subsection carry?
Carried!

Subsection (*o*):

(*o*) "regulation" means a regulation of the Governor in Council under this Act;

Does this subsection carry?
Carried!

Subsection (*p*):

(*p*) "strike" includes a cessation of work, or refusal to work or to continue to work, by employees, in combination or in concert or in accordance with a common understanding;

Does this subsection carry?
Carried!

Subsection (*q*):

(*q*) "to strike" includes to cease work, or to refuse to work or to continue to work, in combination or in concert or in accordance with a common understanding;

Does this subsection carry?
Carried!

Subsection (*r*)

(*r*) "trade union" or "union" means any organization of employees formed for the purpose of regulating relations between employers and employees; and

Mr. Croll: With reference to subsection (*r*), I think it is well for us to consider the exact meaning of it. We are given an opportunity, in this subsection, to strike a blow against company unions. I know that section 96 attempts to do so in a left-handed sort of way, but it does not do it.

Now, it seems to me that would still include a company union. I am personally opposed to them. I think, in general, the department is opposed to them. It does not foster them.

I have not yet written out something specific to indicate that we do not countenance trade unions and that we make a clear statement of principle at this particular time. I cannot say anything more at the moment because I think the committee, generally, shares my view as to company unions.

If there is anyone else who has any objection I think we ought to let this subsection stand until such time that we reach some agreement with respect to it.

Mr. Adamson: I have an objection and it has to do with the word "regulating".

> Subsection (*r*): "trade union" or "union" means any organization of employees formed for the purpose of regulating relations between employers and employees; and

I object to that word "regulating". The trade union does not really regulate relations between employers and employees. It acts on behalf of the employees in dealing, in negotiating with the employer. There are other things which regulate relations between employers and employees. The government regulates relations between employers and employees; and economic conditions; and I would suggest that consideration be given to allowing this clause to stand, for this point to be considered by the committee. I believe that trade unions have a definite function, but that function is not a regulatory function between employers and employees. I have not got anything at the moment to suggest how I would amend this clause, but I do believe that this point ought to be considered by the committee.

Hon. Mr. Mitchell: We have already passed the same thing for employers and pay; we have already passed that and it is the same in the United States National Labour Act, and the same in Nova Scotia and in Alberta, and British Columbia and I presume it will be the same in Ontario and New Brunswick.

Mr. Sinclair: It is not the same in British Columbia.

Mr. McIvor: Mr. Chairman, I do not see any reason or use for employer-dominated unions, when we have collective bargaining and collective security. If a union is dominated by an employer, it is not a union.

Mr. Gillis: I was just going to state that I am concerned about the objection taken by Mr. Adamson. I think the function of a union is to regulate relations between the employer and the employee. It has stood the test of time, and I do not think we will have any difficulty on that score. But to meet the objection of Mr. Croll—he said that he objected to the clause on the ground that it leaves the gate open for the formation of company unions, and he wants to get away from it. He is not going to get away from it by making a declaration of principles. De did that in our first bill in 1940. I think the congress have set ont the wording here and we should accept it if we want to include company unions. The wording is exactly the same as in clause (u) of the draft bill of the congress, and they add, "but shall not include an employer-dominated organization." I am going to move that we add to the present clause (r) which we are discussing the words, "but shall not include an employer-dominated organization".

The Chairman: May I say that if I understood Mr. Croll correctly, he has moved that this subsection be allowed to stand for the time being.

Mr. Gillis: No, Mr. Adamson moved it; he did not move it, he suggested it.

Mr. Adamson: I will move it now.

Mr. Gillis: You are too late now; I will move it; you can move an amendment. I am moving that we add to the present clause, "but shall not include an employer-dominated organization."

Hon. Mr. Mitchell: Look at section 9(5).

Mr. Gillis: I think it should be here, too.

Mr. MacInnis: I think that point is well taken. This is a good place to put that phrase in.

Hon. Mr. Mitchell: "But shall not include an employer-dominated organization?"

Mr. MacInnis: Yes.

The Chairman: It is moved by Mr. Gillis that the following words should be added at the end of this section, namely, "but shall not include an employer-dominated organization." Are you ready for the question?

Carried.

Let us come to clause (*s*), "masculine gender." Shall that carry?

Carried.

Now, subsection (2), "when not to cease being an employee." Shall that carry?

Carried.

Subsection (3), "unit," "appropriate for collective bargaining." Shall that carry?

Carried.

Shall we go on to section 3?

Mr. Lockhart: Before we pass from section 2(3), there is something ambiguous there and I would like to ask for clarification. Subsection (*s*) reads:—

> (*s*) words importing the masculine gender include corporations, trade unions and employers' organizations, as well as females.

According to the decision of this committee you deleted that, did you not? I would like greater clarification.

Hon. Mr. Mitchell: It says, "and employers' organizations."

The Chairman: Shall we go on to section 3 of the Act, "Rights of employees and employers"? Shall (1), "Trade union membership rights," carry?

Carried.

Shall (2), "Employers' organization rights," carry?

Carried.

Now we come to section 4, "Unfair labour practices."

> 4. (1) No employer or employers' organization, and no person acting on behalf of an employer or employers' organization, shall participate in or interfere with the formation or administration of a trade union, or contribute financial or other support to it: Provided that an employer may, notwithstanding anything contained in this section, permit an employee or representative of a trade union to confer with him during working hours or to attend to the business of the organization during working hours without deduction of time so occupied in the computation of the time worked for the employer and without deduction of wages in respect of the time so occupied, or provide free transportation to representatives of a trade union for purposes of collective bargaining or permit a trade union the use of the employer's premises for the purposes of the trade union.
>
> (2) No employer, and no person acting on behalf of an employer, shall
>
> (*a*) refuse to employ or to continue to employ any person, or otherwise discriminate against any person in regard to employment or any term or condition of employment because the person is a member of a trade union; or

(*b*) impose any condition in a contract of employment seeking to restrain an employee from exercising his rights under this Act.

(3) No employer and no person acting on behalf of an employer shall seek by intimidation, by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to refrain from becoming or to cease to be a member or officer or representative of a trade union and no other person shall seek by intimidation or coercion to compel an employee to become or refrain from becoming or to cease to be a member of a trade union.

(4) Except as expressly provided, nothing in this Act shall be interpreted to affect the right of an employer to suspend, transfer, lay off or discharge an employee for proper and sufficient cause.

Mr. CROLL: This is a little too big to go fast on. It says, "Provided that an employer may, notwithstanding anything contained in this section, permit an employee or representative of a trade union to confer with him during working hours . . ." It strikes me that knowing what happens in practice, what usually happens, although we have eliminated company unions by inserting the clause to establish it in principle, as Mr. Gillis says, we ought to see if it will not work. ". . . permit an employee or representative of a trade union to confer with him during working hours or to attend to the business of the organization during working hours without deduction . . ." we are lending assistance to a company dominated union, which is the common practice. If he wants to belong to an employee dominated organization, to talk to some employee during working hours, let them walk about and talk, instead of making him do it at union hours as the union people have to do it. You may say that the union people have a right to go during working hours and that may be true; but they have a working agreement which gives them some rights. I think some objection should be made to the matter of giving an employee certain rights to allow him to continue on and do organization work during the working hours. There is a long list of cases on that. My suggestion is that the only employees that should be permitted to do this are those who have an agreement with the company, with the employer or anyone else, either the bargaining agent or the trade union; but these others should not be permitted during company hours. As a matter of fact, I think the minister will tell you that when that comes before a labour board, and if it can be proved, the labour board usually looks upon that as unfair labour practice and will often rule out an application made because it is considered an unfair labour practice. I think we should cut out the word "employee". Is there any objection to that, Mr. Minister?

Hon. Mr. MITCHELL: Do not let us go to extremes. Even Mr. Gillis approves of this section.

Mr. MACINNIS: Word for word.

Hon. Mr. MITCHELL: Suppose I am a small employer and I have no trade unions. I suppose there are lots of cases like that. You can express your own opinion whether you belong or do not belong to a trade union. I think they have a perfect right to come into my office during working hours. I do not think you should stop that by law. Free transportation is in there for a specific reason. When I worked for the D.P.T. company in Hamilton I was chairman of the grievance committee and they always provided transportation for the committee, and in the agreement it was provided that we could get leave of absence to go to conventions and do business with the union. There are the railroad organizations in the Dominion of Canada and there is a standing rule whereby all the officers of the union have passes to travel on the trains.

I think you can trust the National Labour Relations Board to decide on an application whether a union is a company union or a bona fide union. That board is made up of equal representation of large national organizations and also employers with a chairman and a deputy chairman, and I think we could leave it that way. They are grown up men with a lot of experience and they could easily say yes or no as to whether an organization is dominated by an employer or not.

Mr. CROLL: The reason I bring this matter up is that something has already happened that in my opinion would be an evasion of the Act if it were in force. Take the seamen's strike at the present time. Obviously, that is what they have been doing, and the result has been that we have chaos on the great lakes. We have had considerable difficulty. If there had been no such provision and if that had been an employer-labour practice it would put a different light entirely upon the organizing ability of those people who do not have the bargaining capacity in that particular trade. For that reason I think if we avoid these things at the present time we are less likely to have trouble in the future.

Mr. LOCKHART: I agree with what the minister has said. There are thousands of small employers throughout this country who foster pleasant relationships among the twenty, thirty, forty or fifty employees they have under their jurisdiction, and one of the greatest things I have found as a small employer of labour is that you can have these men come in and sit down and discuss things with you, although they do not belong to a trade union, permit a few of the employees, who may be machinists, or men who have qualifications to come in. They can join a trade union of some kind; but I do not want, because of my personal experience, to see anything happen to stop those very pleasant relationships that I can speak of personally. Hundreds of others enjoy that pleasant relationship, and I do not want to see anything done to curtail it. I think it is a dangerous practice to draw too much of a line of cleavage between employer and employee in the way it has been suggested here.

Mr. GILLIS: I support Mr. Croll; and while the congress bill uses practically the same wording as the present code, I disagree with it for this reason: I do not think the small groups, the little family compacts referred to by Mr. Lockhart would be affected at all—and we do know this, that in many large industrial organizations the employer will and has taken advantage of the fact that there are groups within his employ who are members of the union who will never go to a meeting, who know nothing about their contract or the terms or conditions and will act as individuals and shorten the thing up by dealing directly with the management, even when the agreement is set out and the grievance procedure is set out in the contract. The union is permitted an agency for the employees, and it should be the obligation of the employee to go through the union. In that way he is protecting himself because the committee set up to administer his contract during the period of the contract is familiar with the conditions and knows the employees' rights, and in many cases small groups on the outside get tangled up because they are short-circuiting their union. I suggest that that word "employee" should be taken out. If a plant is not organized and employees go in and do their business individually that is one thing, but once the contract is signed it is the obligation of the members of that union to go through the people they have selected themselves as the agents for their labour affairs. Those men are familiar with the agreement, and in that way a lot of friction is avoided. I have presided over unions where we have had to go out and stop strikes of little groups that were manipulating personal grievances on the outside. I suggest that the word "employee" should be taken out and merely leave in this section the words, "...permit a representative of a trade union to confer with him during working hours..." That is what they are trying to arrange; that they get time off from their work to carry out their legitimate duties in the administration of the contracts. I do not want to make all the motions, but despite what the minister said I am going to suggest that that word "employee" be dropped, and the wording would be, "...a representative of a trade union to confer with him during working hours..."

Hon. Mr. MITCHELL: We hear of a lot of individual rights and freedoms —fundamental freedoms—and I would not like—I would not give a damn for any law that said I could not go and talk—

Mr. GILLIS: This does not say so.

Hon. Mr. MITCHELL: You have had your day in court, this is my turn. I think that is stretching it too far.

Mr. GILLIS: We are talking about collective agreements.

Hon. Mr. MITCHELL: I know something about collective agreements too. We might as well look at the matter logically. It is in the Alberta legislation; it would be in most other legislation; there is no objection from the employers or any of the trade unions; they are all satisfied. So are those people in this country who do not belong to a trade union.

Mr. LOCKHART: They allow any man to talk to the devil himself if he wants to.

Mr. GILLIS: That is not what I was saying. Certainly, the employee has the right to go and deal with the individual problems, but what I am talking about is the administration of a collective agreement; that the elected representatives of the union who signed that agreement should be able to work it out with management, and individual employees should not have the right to contravene their union by going in and dealing with matters dealt with in the collective agreement. There is nothing to stop any individual from talking to anybody, and it is not suggested. I want it to be the right of the elected representatives who have the responsibility of carrying that agreement out to deal with management on that agreement.

Mr. MACINNIS: Mr. Chairman, I think if a thing like this is acceptable to the congress that we could leave it as it is because it is rather difficult to come to any definite conclusion as to what an employee as distinguished from a representative of a trade union can do here. But in regard to an employee speaking on behalf of his organization, if he has not been appointed by his organization, that is something for the organization to do. Surely we are not going to legislate in this bill as to what an organization is going to allow its own members to do. If an employee is a member of a trade union it is up to his union to decide what he shall do—whether he shall talk to management or not. I have had some experience; and any member of the union who went beyond the organization to talk things up with the management would be very unlucky and would find himself without the support of the organization dealing with these matters.

Hon. Mr. MITCHELL: He would not longer be a member of the organization.

Mr. GILLIS: That may work all right in a street railway where you have forty members and a business agency, but it does not work where you have 12,000 or 16,000 or 20,000 members to deal with. I am thinking of the big mass organizations. The reason I am stressing this is that I know that in my own union, the miners' union in Nova Scotia, within the last three years they have had to take some drastic stand on this matter and they are endeavouring to route their membership through organization. My union is fighting this attitude.

Mr. CROLL: I think there is one objection to what Mr. Gillis and I have said. There is a collective agreement. What happens to a man who does not belong to a union—never mind about forming another union? He has some rights. He does not want to join a union. He must have some rights. Suppose he has a grievance; there is no Rand formula there; he does not pay; where are his rights?

Mr. GILLIS: We have already outlawed him, have we not?

Mr. ARCHIBALD: Normally I agree with Mr. Gillis, but there is one point that comes to my mind and that is this: I am not exactly sure of the wording; I am thinking of fights within the union, and I am rather leery about withdrawing that because it can have a double-barrelled effect.

Mr. TIMMINS: In what way?

Mr. ARCHIBALD: I am keeping that to myself.

Mr. ADAMSON: I think that any regulation which prevents the closer association of the employee and the employer is dangerous.

The CHAIRMAN: Shall subsection (1), "Employer or employers' organization interference with trade union", carry?
Carried.

Mr. GILLIS: On division.

The CHAIRMAN: Shall subsection (2) (*a*) carry?
Carried.

Shall clause (*b*) carry?
Carried.

Shall subsection (2) carry?
Carried.

Now we come to subsection (3), "Intimidation or threats against trade unionism". Shall that section carry?
Carried.

Subsection (4), "Right of employer to suspend, discharge, etc.".

> (4) Except as expressly provided, nothing in this Act shall be interpreted to affect the right of an employer to suspend, transfer, lay off or discharge an employee for proper and sufficient cause.

Mr. MACINNIS: Before this subsection is carried—I am not objecting to it—I wish to say that under our present laws the employer is not restricted or impeded by a trade union and can dismiss an employee at will, and even then he has not to give the reasons for dismissal. I think that is the law; and those who are dealing with human rights and fundamental freedoms should take note of that fact; because there is no freedom there at all, if a man can be dismissed from his livelihood without any reason being given whatsoever—except at the wish of the employer.

Mr. GILLIS: That is in unorganized industries.

Mr. MACINNIS: That is the practice and there is no protection in law.

Mr. GILLIS: This particular thing does not worry me because in every collective agreement that particular clause is covered and it is covered in the mechanics of the thing. If a man is laid off by anyone he goes before the union and if it is not handled by the union he goes before the superintendent of the company, and if they do not come to an understanding he goes before a referee, a person set up for the purpose of determining questions that cannot be agreed upon. If he is dismissed wrongly he is paid all his back wages and reinstated. That is a general clause in most collective agreements. I do not know how you are going to give them the protection as suggested by Mr. MacInnis unless you do it through human rights or fundamental freedoms.

Mr. LOCKHART: The employer has to go to the unemployment insurance office and he has to fill out a slip for his employees, stating in particular terms the reason why the employee is being dismissed. I think that matter is covered under the present regulations. I do not think there is any trouble about it.

Mr. CROLL: There is no inherent right, as Mr. MacInnis points out, and I do not know what we can do about it.

The CHAIRMAN: Subsection (4); shall it carry?
Carried.

Section 5, "Soliciting memberships in union during working hours." Shall the section carry?
Carried.

Section 6(1), "Collective agreement conditions allowed." Shall it carry?
Carried.

Subsection (2), "Invalid conditions." Shall it carry?
Carried.

Section 7, "Collective bargaining. Application for certification of bargaining agent." Subsection (1), "Conditions of application," shall it carry?

Mr. CROLL: Take the whole section, it is all tied in.

The CHAIRMAN: I shall read the whole section.

COLLECTIVE BARGAINING.

Application for Certification of Bargaining Agent.

> 7. (1) A trade union claiming to have as members in good standing a majority of employees of one or more employers in a unit that is appropriate for collective bargaining may, subject to the rules of the Board and in accordance with this section, make application to the Board to be certified as bargaining agent of the employees in the unit.
>
> (2) Where no collective agreement is in force and no bargaining agent has been certified under this Act for the unit, the application may be made at any time.
>
> (3) Where no collective agreement is in force but a bargaining agent has been certified under this Act for the unit, the application may be made after the expiry of twelve months from the date of certification of the bargaining agent, but not before, except with the consent of the Board.
>
> (4) Where a collective agreement is in force, the application may be made at any time after the expiry of ten months of the term of the collective agreement, but not before, except with the consent of the Board.
>
> (5) Two or more trade unions claiming to have as members in good standing of the said unions a majority of employees in a unit that is appropriate for collective bargaining, may join in an application under this section and the provisions of this Act relating to an application by one union and all matters or things arising therefrom, shall apply in respect of the said application and the said unions as if it were an application by one union.

Shall section 7 carry?

Mr. ADAMSON: I would like to have an explanation of subsection 5 of section 7, just what does that mean? That means, I take it, that two unions competing for certification in one plant may combine?

Hon. Mr. Mitchell: Not competing unions.

Mr. Adamson: Oh, not competing unions?

Hon. Mr. Mitchell: If they want to co-operate, that is all right; if they want to form a federation such as the railway federation.

Mr. Adamson: Subsection 1:

> "A trade union claiming to have"

Does the union have to make some sort of claim?

Mr. Croll: They make the assertion first.

Mr. Adamson: They make the assertion first, and that is looked at by the board to see whether they have sufficient; do they need to show the board that they have?

Hon. Mr. Mitchell: That comes in the next section.

The Chairman: Does section 7 carry?

Carried!

Section 8:

> 8. Where a group of employees of an employer belong to a craft or group exercising technical skills, by reason of which they are distinguishable from the employees as a whole and the majority of the group are members of one trade union pertaining to such craft or other skills, the trade union may apply to the Board subject to the provisions of section seven of this Act, and shall be entitled to be certified as the bargaining agent of the employees in the group if the group is otherwise appropriate as a unit for collective bargaining.

Mr. Croll: I do not know exactly what that means. My interpretation of it is that it would lead to trouble. What exactly does that mean? I can foresee some jurisdictional strikes.

Hon. Mr. Mitchell: No, Mr. Croll. That protects your craft union. That has been the general practice on the North American continent. Take, for example, the boiler makers, or the machinists.

Mr. Croll: They can go off on their own.

Hon. Mr. Mitchell: They can go off on their own and negotiate their own agreements. Take the building trades, the plumbers and so on. That protects the craft union.

Mr. Sinclair: They do not have to follow the other unions in their plants.

Mr. Adamson: With respect to unions doing specialized or skilled work, there was a plant in Detroit where there was a small group of crane operators who were essential to the operation of the plant; and they formed themselves into a union. They are capable of paralysing the entire plant.

Now, it seems to me that this would open the way for such a small group, who are in a key position, to paralyse the entire plant against the wishes of the huge majority, or against the wishes of the other employees, and against the wishes of the employers of the plant. I do not quite see how you can get over it, because the craft unions are, very definitely, a law unto themselves, in many ways. It seems to me that this clause would leave that possibility, of a small group being able to paralyse a large industry.

Hon. Mr. Mitchell: My good friend says that it opens the way. The way is open already.

Mr. Gillis: It has been for a long time.

Hon. Mr. Mitchell: It has been for a long time. It is like jurisdictional disputes. There is no substitution for good common sense, and that goes for both sides. You know, there are lunatic things done on both sides to any dispute, whether it be in a nation or in a community.

I think it is essential that you protect the rights of the old craft unions because they are the basis of our modern unions as we have them to-day. Some employers would rather deal with them. I know of many cases, such as the one you spoke of in Detroit. It is just one of those things. I think I mentioned once before that the mere fact you pass a law does not mean that that law won't be broken. I think most laws which are passed are broken, whether they be this kind or any other kind of law. But generally speaking we have not had any trouble of that kind in the unions.

The Chairman: Does section 8 carry?
Carried!

Section 9, subsection (1):

> 9. (1) Where a trade union makes application for certification under this Act as bargaining agent of employees in a unit, the Board shall determine whether the unit in respect of which the application is made is appropriate for collective bargaining and the Board may, before certification, if it deems it appropriate to do so, include additional employees in, or exclude employees from, the unit, and shall take such steps as it deems appropriate to determine the wishes of the employees in the unit as to the selection of a bargaining agent to act on their behalf.

Does the subsection carry?
Carried!

Subsection (2):

> (2) When, pursuant to an application for certification under this Act by a trade union, the Board has determined that a unit of employees is appropriate for collective bargaining
> (*a*) if the Board is satisfied that the majority of the employees in the unit are members in good standing of the trade union; or
> (*b*) if, as a result of a vote of the employees in the unit, the Board is satisfied that a majority of them have selected the trade union to be a bargaining agent on their behalf;
> the Board may certify the trade union as the bargaining agent of the employees in the unit.

Mr. Croll: With respect to subsection (2) clause (*a*); that is a change from P.C. 1003. In P.C. 1003, the new words added are: "members in good standing of the trade union; or,"

That seems to me to be a very serious defect. The words in P.C. 1003 were: "authorization" were they not?

Hon. Mr. Mitchell: Yes.

Mr. Croll: In the ordinary course of new unions being organized, the practice is that you sign an authorization card which you bring into the National Labour Board, or into the Regional Labour Board, or whatever labour board it may be, in the ordinary way, signed, and you say: I hereby authorize the union to act for me in a bargaining capacity. Usually there are dues to be paid in respect to that. Now, if the board is going to insist that you be a member in good standing, it means that it may lay down conditions; it may say that they must be in good standing for three months or for six months, or that you must not be in arrears. That would be a deterrent to organization. And they make reservations as to what these words may mean.

Mr. **Merritt**: Has the board power to define those words?

Mr. **Croll**: They have the power to make regulations. We passed that a few minutes ago. They can make conditions from time to time as to what good standing may mean. They may say: prove to me that you have no dues in arrears.

You may often have a union member with his dues in arrears, and yet the union may get those dues in time, and the union may carry him. It quite often happens.

Frequently the person who is a member of the union cannot afford the luxury of paying his dues in advance. Up to the present time the unions have never expected it. But now, if you insist that the unions be recognized, and that for all purposes they become dues-paying unions, you will find it to be a handicap to organization.

P.C. 1003 worked out very well. It allowed people to go out and obtain authorizations and then appear before the board. The board would then send someone around to make sure that the cards were properly authorized and not phonies. Or, if they were phonies once, they could not get away with it again. Now, to expect these people to be members of a union for a certain time, I think would be a deterrent.

Mr. **Timmins**: How do you interpret the words of section 7?

Mr. **Croll**: Which words?

Mr. **Timmins**: Section 7, subsection (1), at the very beginning:

> "Members in good standing"

Mr. **Croll**: I am sorry; I missed these words; I did not seem to be paying much attention to them. This is a deviation from the former practice which has worked out very well. However, I think it is a dangerous deviation and I think we should make sure that we fully understand what the implications are before we pass it.

Hon. Mr. **Mitchell**: It has been my experience as well as that of the Labour Board, I think, that people will sign anything so long as it does not cost them anything. These authorization cards—this is an extreme case which I shall cite—where they were fighting for jurisdiction over a certain industry in Ontario—these chaps usually come to my office when they get in a fight. One chap said: "I got my authorization cards out of the telephone book."

I think that if the trade union is worth anything, it is worth joining and if you are going to get these benefits from that organization, you should be big enough to pay the freight, which means, to pay the dues. That is language which is used in the labour movement.

Now, whether or not the period of time be three months or six months, that is usually governed by the constitution of the organization. Most constitutions of organizations permit the general executive board, or the general president to say, that for this organizing drive, it shall be one month or two months, and the initiation fee would be the yardstick for the policy which we will follow out during this drive.

I have seen so much of skullduggery on both sides in connection with the organizing of plants; but I still come back to the old principle that if the union is good enough to do something for you, it is good enough to join. And, like any other organization, whether it be lawyers, doctors or whatever it may be, this card business lends itself to a great deal of abuse today.

Mr. **Croll**: As you know, this does go on, and I would like to speak about something I know more about, the textile industry. There are often times, when you have a union, when it will change from one to another. Now, at the present time the board is very sticky on it, and when they come before the board they are asked: have you paid dues to the new union; and the answer must be no. Make sure that the answer is no, because if the answer is yes, the board immediately takes a poor view of it. And when you present the authorization card, if the answer has to be yes, you will often have people who just cannot make that investment, with the result that they do not get the benefit of better trade unionism.

Hon. Mr. MITCHELL: You are getting into what they call a jurisdictional dispute.

Mr. CROLL: Yes.

Hon. Mr. MITCHELL: There is a good deal of this going on, where groups of individuals come along and steal an organization, in the true sense of the word, away from another group of individuals who created that organization. Now, I think when they come along and say: the officers of your organization are no good; they have not represented you properly; I think it should be proven not merely by signing a card, but by paying dues into the new organization with an initiation fee, or by a vote.

Mr. CROLL: No. They cannot have a vote unless they are members in good standing.

Hon. Mr. MITCHELL: At the end of ten months?

Mr. ARCHIBALD: There is just one question that I would like to ask. Take, for example, the Seamen's International Union. You pay your initiation fee, but you do not get full membership standing for a good number of months, yet, to all intents and purposes you have paid your dues for several months. So there is this case where you do not get the full privileges of being a member until you have been in a certain number of months.

Hon. Mr. MITCHELL: If that evidence was given to me, that these men had paid their initiation fees, I would say they were bona fide members of the organization. Take the British seamen. They have a peculiar system. They call it democracy; but your vote in the union meeting is predicated on the length of your membership in the organization. I talked to a member of the organization quite recently and I said to him: How many votes do you have in the seamen's union? And he said: 35. That is done to control the fly-by-night fellows who join the organization.

Mr. GILLIS: I agree with Mr. Croll on this matter. I think the wording of that clause precludes organization. I am not thinking in terms of where the union is fairly well set up in a plant. It could work, but in the great majority of cases, the unions that would be looking for certification are unions which are getting into a new field. It is impossible for a union organizer where plants are fenced around; there is no chance of his talking to the workers or building up an organization. To have the majority of men employed in the plant paying dues to a union, and then seeking certification is an endless job.

I think the Saskatchewan act is the proper one. In the Saskatchewan act it says that if a union has 25 per cent of the employees of the plant, it can then apply for a vote of the employees in that plant, who then have the right to a vote as to whether they wish to become members of the union or not. Then, when the vote is taken, if the union secures 51 per cent of the employees in the plant, the union thereby secures bargaining rights for it.

In this case, if a union applied for certification, the board is not compelled to take a vote. The board can demand an examination of the records of the union, and unless the men have actually paid dues into the union, be it 50 per cent of the employees of the plant, or whatever percentage they want to set—I do not know what they consider a majority—there is no certification in that case. There is no certification indicated, and I think myself that this thing should be taken out altogether, and that the only wording in there should be that the union applies for certification and proves that they have a certain percentage of the men in the plant indicating a desire to join a union; then I think the democratic way of doing it is to have the board take a vote—never mind the records of the union. That precludes manipulation of this card that the minister talks about. If the board takes a vote of the employees in the plant and a majority of them vote to join as their bargaining agency, then it is certified and once it is certified from then on in it is the job of the organizers to sign them up; but it is rather difficult when you are breaking into a plant where management is hostile, where men are afraid and are intimidated if they say anything or join a union for fear they will lose their job. Once the union is certified and has legal status, and they have had a secret vote, then the difficulty of organization has been removed. There is nothing in this, in my opinion, that can cause any difficulty except the wording in this Act where you have to prove you have members in good standing. That is where the manipulation the minister talks about comes in. They go out and get fake cards. If the vote is taken, that is the democratic way to do it.

Hon. Mr. MITCHELL: Under subsection (4), "The board may, for the purposes of determining whether the majority of the employees in a unit are members in good standing of a trade union or whether a majority of them have selected a trade union to be their bargaining agent, make or cause to be made such examination of records or other inquiries as it deems necessary, including the holding of such hearings or the taking of such votes as it deems expedient. . ." that is as wide as the ocean.

Mr. GILLIS: It is all predicated on, "If the board is satisfied that the majority of the employees are members in good standing of a trade union." If you cannot prove that in the first instance I do not imagine there would be any further action.

Hon. Mr. MITCHELL: It is all predicated on getting a majority. You and I have seen so much of this. If the organization has a majority of members in good standing that is all right, but there is this matter of signing these tickets or ballots and saying, "Boys, mark these ballots and it will get you $50 a week; the other fellows will only offer you $25."

Mr. GILLIS: Are you not up against that here?

Mr. MACINNIS: I think the difficulty is to differentiate—I do not know how it can be put into the Act—as between an organization and where there has been no organization—between building up a new union from the bottom up and where there has been a union. In the one case it is fairly simple; but if you are going to demand membership in good standing you first have to decide what is good standing.

Hon. Mr. MITCHELL: The constitution of the union.

Mr. MACINNIS: There may be no constitution if you have a new union. You cannot have a union until you have sufficient members who are willing to form a union.

Mr. TIMMINS: They have at least to pay an initiation fee to start with.

Mr. MACINNIS: I am speaking out of my experience with unions. You people are speaking of your experience with people who had education up until they were twenty-five of age or perhaps beyond that. Take people who are working in an organization where they are getting $5 or $6 or $7 a week, people with very little education—it is these people in unskilled work who can be fired and another person brought in immediately. There is no $1,400 initiation fee in those organizations, and it is most difficult to get sufficient members—a majority of the members—particularly if the employer is hostile; and he can be hostile in various ways without coming under this Act.

So I suggest that we leave this section over and see if we can find some way in which the board can deal with the unions that are being formed in an unorganized industry.

The CHAIRMAN: It is 1 o'clock.

Mr. ADAMSON: Mr. Chairman, before you adjourn I would like to suggest that some definite hour be set for the meeting of this committee. A lot of the members have to meet people just before 1 o'clock, and I move that the committee meet at 10.30 and adjourn at 12.30. That gives us two hours. I will make that motion.

The CHAIRMAN: You have heard the motion, shall it carry?

Carried.

The committee adjourned to meet on Tuesday, May 4, 1948, at 10.30 a.m.

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Canada. Industrial Relations, Standing
Committee on 1947/48
and reports

SESSION 1947-48

HOUSE OF COMMONS

STANDING COMMITTEE
ON
INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

Bill No. 195—The Industrial Relations and Disputes
Investigation Act

TUESDAY, MAY 4, 1948

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MINUTES OF PROCEEDINGS

TUESDAY, 4th May, 1948.

The Standing Committee on Industrial Relations met at 10.30 o'clock. The Chairman, Mr. P. E. Cote, presided.

Members present: Messrs. Adamson, Archibald, Black (*Cumberland*), Case, Charlton, Cote (*Verdun*), Croll, Dechene, Dickey, Gauthier (*Nipissing*), Gillis, Hamel, Johnston, Knowles, Lockhart, MacInnis, Maloney, Maybank, Merritt, Mitchell, Sinclair (*Vancouver North*), Skey, Smith (*Calgary West*), Timmins.

In attendance: Mr. A. MacNamara, Deputy Minister, and Mr. M. M. MacLean, Department of Labour, Ottawa.

The committee concurred in a correction to an error in the minutes of April 29, page No. 67, last two lines of Mr. Adamson's motion, which should have read: "employment of employees including provision with reference to rates of pay and hours of work."

Copies of the following were distributed to members:

(*a*) Brief, dated 3rd May, 1948, enclosing "A National Labour Code" and an explanatory memorandum, submitted by the Canadian Congress of Labour;

(*b*) Brief, dated April, 1948, submitted by the Canadian Manufacturers' Association.

A letter dated 3rd May from the Canadian Congress of Labour relating to alterations in their brief of 3rd May, was read by the Chairman.

It was agreed that the above briefs be referred to the Steering Committee.

A brief tabled by Mr. Adamson relative to views of engineers on Bill No. 195 was referred to the Steering Committee.

By unanimous consent, the committee reverted to Clause 4, whereupon Mr. Croll moved that the following be added to sub-clause (4) thereof:

> Upon the request in writing of any employee, and upon request of a trade union representing the majority of employees in any bargaining unit of his employees, the employer shall deduct and pay in periodic payments out of the wages due to such employee, to the person designated by the trade union to receive the same, the union dues of such employee until such employee has withdrawn in writing such request, and the employer shall furnish to such trade union the names of the employees who have given or withdrawn such authority. Failure to make payments and furnish information required by this section shall be an unfair labour practice.

Mr. MacInnis moved that immediate consideration be given to the proposed amendment of Mr. Croll. The question being put on the motion of Mr. MacInnis, is was resolved in the negative.

Consideration of Mr. Croll's motion was accordingly postponed.

Clause 9

(2) Carried.

(3) Carried on division.

(4) Carried.
(5) Stood over.

Clause 10

Carried.

Clause 11

Stand.

Clause 12

Carried.

Clause 13

Carried.

Clause 14

Carried.

Clause 15

Carried.

Clause 16

Carried.

Clause 17

Carried.

Clause 18

Stood over.

The committee adjourned at 12.30 o'clock p.m., to meet again Thursday, 6th May, at 10.30 o'clock a.m.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

House of Commons,
May 4, 1948.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Chairman, Mr. Paul E. Cote, presided.

The Chairman: The meeting will come to order, gentlemen; we have a quorum.

You have all received, gentlemen, the minutes of proceedings of the last meeting, which is No. 2. As for No. 1, I wish to point out that it has not been distributed by mail. It was held up by the clerk when he noticed an error in the printing on the front page. You have it in front of you. There are listed on the front page two names of witnesses in error. So this was returned to the printer to be corrected.

I wish also to point out an error in transcription on page 67, of the minutes of our last meeting, the last two lines of the motion made by Mr. Adamson and it should read as follows: "employment of employees including provision with reference to rates of pay and hours of work."

Now, gentlemen, we have distributed this morning a brief by the Canadian Congress of Labour dated May 3, 1948, with an additional copy of the private labour code of the congress. As agreed at our last meeting this will be submitted to your steering committee. As we have enough copies for all members of the committee we thought we would distribute it to you this morning.

I have a letter from the Canadian Congress of Labour rectifying certain words in their brief. This letter is dated May 3, 1948. It is addressed to the chairman, and reads as follows:

> Dear Mr. Cote:—In our memorandum on Bill 195, which I trust has already reached you, there are some minor corrections necessitated by the fact that since it was drafted, Ontario has passed new legislation and New Brunswick has announced that it is not adopting the Dominion legislation at the present session. Would you be kind enough therefore, to inform the committee of the following corrections:
>
> Page 12, line 8, delete the word "Ontario."
> Page 17, line 13, "four" should read "three."
> Page 17, line 15, "six" should read "seven."
> Page 17, line 18, after "Manitoba" insert "and," and after "Ontario" insert "Acts;". Strike out "and" and replace by "(6) the."
> Page 17, line 19, "Acts" should be "Act" and "(6)" should be "(7)."
>
> Yours truly,
>
> (Eugene Forsey)
> *Director of Research.*

We have distributed this morning also a brief from the Canadian Manufacturers' Association dated April 1948. Now, much of this brief was printed in 1947, but the new parts which have been added have been indicated by red markings in the margin of the brief, as you will notice.

When we adjourned at our last meeting we were considering section 9, subsection 2, clause (a); and discussion is still on this matter.

Mr. CROLL: Mr. Chairman, I wanted to revert to section 4. We were discussing here at the time section 4. I think it is just as well that we clarify it. There was considerable discussion about union security here and we did not—

The CHAIRMAN: What section is that?

Mr. CROLL: That was on section 4.

The CHAIRMAN: Are you now reverting to section 4? Do you wish to reopen discussion on that section?

Mr. CROLL: Yes, Mr. Chairman; I want to reopen discussion on section 4.

The CHAIRMAN: That cannot be done, unless it is agreeable to the committee.

Mr. CROLL: Oh, but we can discuss any section at all; I mean, otherwise, we would be put in a rather difficult position.

The CHAIRMAN: But you will recall that section 4 carried.

Mr. CROLL: Yes, I realize that, Mr. Chairman; but I am again referring to section 4, and I want to offer something that will be additional to it. As far as I am concerned it does not really matter a great deal because it also comes up in connection with a number of other different sections, but I think it is pertinent to section 4, and therefore should be disposed of before we come to subsequent sections.

The CHAIRMAN: I have no objection, if it is agreeable to the committee.

Mr. MACINNIS: Mr. Croll, I think perhaps it would be better procedure if we continued through the act dealing with each section as we come to it, then if members of the committee wish to after we finish we could go back over every one of these sections again if we want to. Would not that come up under another section?

Mr. CROLL: It might apply to other sections, Mr. MacInnis, but we were talking about matters of this kind particularly when we were discussing section 4, and I thought it might be helpful and save time for the committee if we were to dispose of it by reverting to section 4, and reopening discussion on that. The motion I propose to offer deals with the checkoff and I believe in discussing section 4, we considered that as a measure of union security. Now, Mr. Chairman, we have had considerable discussion on union security here before, and many of us have different views as to what it might mean and what it may contain. My resolution is this—seconded by Mr. Gauthier:

> Upon the request in writing of any employee, and upon request of a trade union representing the majority of employees in any bargaining unit of his employees, the employer shall deduct and pay in periodic payments out of wages due to such employee, to the person designated by the trade union to receive the same, the union dues of such employee until such employee has withdrawn in writing such request, and the employer shall furnish to such trade union the names of the employees who have given or withdrawn such authority. Failure to make payments and furnish information required by this section shall be an unfair labour practice.

That is why I brought it under section 4. My purpose of offering this resolution at this time, Mr. Chairman, is to avoid repetitious discussion on it. It might be considered in connection with almost any section which follows. I think that is the least we can go in the way of union security. If we pass it, and if we concur in it, then we will know exactly where we are going rather than discussing continuously the question of the union shop, or whatever else we may decide on. As a matter of fact, what I am proposing is not new, because almost every agreement contains it as a matter of course. It really affects only a small number of cases, but perhaps some are still withholding, and for that reason I think it is important that we should give our support to the voluntary checkoff.

The CHAIRMAN: I think, before we proceed any further on this, Mr. Croll has stated his point. Is it agreeable to the committee that we should discuss this particular resolution under section 4, now?

Mr. LOCKHART: No.

Hon. Mr. MITCHELL: I just want to say this. I have not changed my opinion from what I expressed at the last meeting of this committee. I believe, and I am taking the long view and not the short view, that things generally are all right, and that there is ample provision for collective negotiation with respect to matters in that category.

Mr. CROLL: As I just said, it is in almost every agreement.

Hon. Mr. MITCHELL: I think the clauses of this bill are broad enough to cover this. We have seen what has happened south of the line. We have seen what has happened in other countries. I believe it is good sound judgment to iust pass this bill which should properly be a bill to provide for collective bargaining and I think very little in the way of conciliation procedure should be written into it; I mean, of course, matters which properly belong to negotiations between the parties. I think that is one of the fundamental principles of this bill.

The CHAIRMAN: Now, gentlemen, are you ready for the question?

Mr. MACINNIS: I take it, Mr. Chairman, that the question before us is, are we to deal with Mr. Croll's resolution now?

The CHAIRMAN: Yes.

Mr. MACINNIS: In support of the argument Mr. Croll has put up to to why it should be considered now, I move that we consider it now; that will dispose of the matter.

The CHAIRMAN: Does anyone wish to speak to the point?

Mr. GILLIS: I think this is something that should be understood. I agree with you, Mr. Croll.

The CHAIRMAN: Mr. Gillis, would you restrict your remarks to the question of procedure, please.

Mr. GILLIS: You mean you were not discussing the resolution at all?

The CHAIRMAN: No. We have a motion by Mr. MacInnis, seconded by Mr. Knowles, that the committee should now consider the resolution of Mr. Croll. Is the motion carried?

Mr. TIMMINS: Would Mr. Croll tell us why it comes under section 4?

Mr. CROLL: It is an unfair labour practice, that is why it comes under section 4. We discussed it there before. It will come under section 9, subsection 5, and some other sections as we go along.

Mr. TIMMINS: You say it is an unfair labour practice and you suggest that we go back to deal with it by reopening section 4; is that it?

Mr. CROLL: You will find that it will recur on almost every section as we go along. If we dispose of it now by reopening section 4, it may avoid a good deal of repetitious discussion.

Mr. TIMMINS: I am suggesting that if it comes under another section let us not go back all the time, let us keep going forward and take it up under another section to which it can be related and deal with it then.

Mr. CASE: What would be the effect of the motion?

The CHAIRMAN: This would be an addition to section 4.

Mr. MERRITT: I should like to say that this proposal of Mr. Croll's is a very important one and that the wording of it will be very important, and I for one would like to deal with it at the earliest convenient stage, but I would like to have the wording of it before me.

The CHAIRMAN: But the resolution now before the committee is on the matter of procedure.

Mr. MERRITT: Yes. What I mean is this, that if we are going to discuss it now we ought to have a copy of the motion in front of us so that we would know with what we are dealing, what kind of a section we are proposing to write into the bill. I think that is very important.

The CHAIRMAN: Are you ready for the question, gentlemen? The question is on the motion by Mr. MacInnis, seconded by Mr. Knowles, to allow Mr. Croll to proceed with the discussion of his resolution.

Mr. KNOWLES: May I say just one word at this stage Mr. Chairman; if we settle this matter now we can then go on to the next subject. We will be saving time if we dispose of it right away.

The CHAIRMAN: The motion is to allow Mr. Croll to proceed with the discussion of his resolution now. All those in favour of the motion?

Mr. MERRITT: Before you put the question, hasn't Mr. Croll got copies of his motion so that we can all have it before us and know exactly on what we are acting?

Mr. CROLL: I gave all the copies I had to the chairman.

Mr. MERRITT: I do not want to discuss it without having it before me.

The CHAIRMAN: All those in favour of the motion? Opposed?

The motion is defeated.

We are now on section 9, subsection 2, clause (*a*):

Mr. MACINNIS: Mr. Chairman, when we adjourned last Thursday I was saying something on this section and my objection to it as it now stands is that it does not appear to provide for a trade union which is let us say in the making. For instance, in section (*a*), it says:

> If the board is satisfied that the majority of the employees in the unit are members in good standing of the trade union;

When I, or someone else, asked for an explanation of this clause, I think the Minister of Labour said that according to their appreciation of it a union has really to be in existence, and in fact must have been in existence for some time; and that they must have a constitution. Well, before a constitution can be drafted first you have to have a lot of work done in the way of organization. including the setting up of the bargaining unit. And I think the minister will agree with this, that it is necessary to have a sufficient number in the organization, even in an embryo organization, before it can make its proposals to the management. That is the most difficult time that a trade union has, and it is a time when particularly with new unions management in various ways can put obstacles in their way. There is, however, the possibility that paragraph (*b*) takes care of that. I am not sure. I looked at it last night for a considerable time but I unfortunately did not feel completely assured that paragraph (*b*) did take care of the situation I pointed out; but in case that that is so I suggest another paragraph that would come in between (*a*) and (*b*). I am just putting it this way. I think it might reach fruition. It is not worded, not expressed in legal terms. That could be done later. But the principle is what matters. Following after (*a*):

> if the board is satisfied the majority of the employees in a union affected by the application are members of trade unions, or have authorized to trade unions to act on its behalf.

I am putting that forward as a suggestion that would make this section of the act more applicable to a situation where a union has not yet been formed.

Hon. Mr. MITCHELL: If I might put it this way. I think it is a principle recognized by all congresses and unions. The point you have raised I do not think would arise under ordinary labour conditions as they exist at the present time. I could understand it a few years ago. First of all, there is organization for everybody who wants to be organized. There are the International Unions, there is the C.I.O. Union, there is Railway Brotherhood, there is a Catholic syndicate—they are all capable of taking care of a situation of this kind; so I say, to take care of those who are out on a limb—if I might use that language—you have the federal charter of the Trades and Labour Congress of Canada; you have the big unions; and then, you have the Catholic syndicates. You and I both know the usual setup. We know the charter of our own unions and their place in the federal union scheme—I think it is sound policy in defence of what we called well established organizations to insist that a man should pay his dues towards the constitution of the organization; which, as I pointed out the last time, makes special provision for organizing campaigns. Now, it does seem to me, with the situation organized as it is today in North America, and particularly in the Dominion of Canada, that if you want to organize the facilities are there through the Trades and Labour Congress of Canada, through the Canadian Congress of Labour, through the Catholic Syndicate and all the others—I don't want to go down through all the affiliated organizations. I think you know what the situation is well enough. It does not compare to what it was twenty years ago; and to my own knowledge we have not come across difficulties of the kind to which you have referred. I say this, too, that we have adequate representation for permanent employee organizations in Canada; and I am quite prepared to leave to their judgment and discretion a point such as has been raised by yourself.

Mr. MacInnis: May I point, Mr. Minister, some examples to which you have referred, such as national and international bodies. It might apply to them; but under this section you are dealing not with trade unions entirely, you are dealing with others who are in the process of formation.

Hon. Mr. Mitchell: Yes, sure.

Mr. MacInnis: I am referring more particularly to employees who want to form a union. Supposing, for instance, we take the street railway employees in Vancouver who are not yet organized. Let us assume that, and that they were beginning to create an organization, and when they thought they had a sufficient number of applications for members to make an application to the board they would appear before the board. Under this section of the bill the first thing the board would be to find out how many members the union have in good standing. Now, if they had been in operation, shall we say for a period of six months, during which time they had been gathering in members, they could not very well take in more in any case. They would not have an organization strong enough to insist that each member would pay his dues in each month when the membership was getting no results from the organization. Now, it seems to me that there should be some provision for unions and employees who have not yet organized in Canada, by which they can properly be taken care of.

Hon. Mr. Mitchell: We hear a lot about company unions and particularly under present conditions in the west. It is something like ships that pass in the night. But I want to say this, they are already protected by trade unions while they are in the stage of formation, while they are organizing. I cannot understand why a permanent trade union would find any fault with that setup.

Mr. MacInnis: The bill proposed by the Canadian Congress of Labour amplified this part, but I felt it used too many words and could be made much shorter. But I would agree to this extent with the minister, that perhaps section (b) takes care of the situation which I mentioned:

> (*b*) If, as a result of a vote of the employees in the unit, the board is satisfied that a majority of them has selected the trade union to be a bargaining agent on their behalf;

If the committee are satisfied that this meets the situation I will be prepared to let it go.

Hon. Mr. MITCHELL: Is not this point taken care of by the petition for representation in the organization of the board itself. I think you will find that that is provided for.

Mr. TIMMINS: I think the minister's remarks are very practical and I think they have had a practical application recently. Within the last two weeks I have had experience in Ontario with something very similar to what is visualized in this particular clause. A union came into a plant where there had not been a union before. I cannot see any obstacle in this particular clause which would retard the organization one little bit. Mr. MacInnis says that when a union goes into a plant the management can put many obstacles in the way of the union. I do not see that the companies can and in fact the company is almost helpless with respect to the union. It does seem important to me that a person who is lining up with a union, and is presumably to get the benefit of that union, should at least have confidence in the people with whom he is associating himself and he should pay dues. I think that is the practical responsibility of the union.

Mr. ADAMSON: I think the regulations as they exist prevent the raiding of one union by another, something which would likely cause friction if not prevented. I think the employees request to have a trade union strengthens the position and is of benefit to the union. I think it is to the advantage of the members and I think it affords security in the way of preventing fly by night organizations from raiding a plant which is functioning happily and normally, and it thus prevents the upsetting of the operations of the plant.

Mr. MACINNIS: Mr. Adamson the difficulty is this expression "members in good standing" . I do not think, as the result of my experience, that you can carry on without having members in good standing. I would like you to have a talk with some of the pioneers of union building in Canada and the United States who know something of the difficulties and who know how difficult it is to organize a union.

Mr. SMITH: We are having a talk with one of those persons now.

Mr. MACINNIS: During the war trade unions had an opportunity which does not come along every day. They had an opportunity to build their union when employment was in full flush and if the employer intended to dismiss anyone, not only would the employee get another job immediately but the government would tell the employer that he could not dismiss the man because they wanted production at that plant. When we get on to what may be a more normal situation in a few years the difficulties will be much greater than they were.

Mr. CROLL: I asked the minister the last time why the words "authorization" were replaced by "members in good standing". "Authorization" was the word used in P.C. 103. That was the case of presenting authorization cards to the board and the board dealing with the situation after assuring themselves that the authorization cards were properly signed and were not phonies. The danger appears to me to be that someone will have to define the words "good standing", and that someone will have to be the board. The board may say the members have to be paid up to within three months, or six months, or any period which they see fit, or they may say that men must not be in arrears. However, we know that there is always someone in arrears who catches up later on. It may mean in the case of a new union that a man may have to pay for three or four months without seeing any results and that may make unionization most difficult, particularly in the early stages where nothing is coming in and everything is going out. I suggest the word "authorization" should be left in unless we can give a meaning to the words "in good standing". That expression may turn out to be what bites us, and I think that expression should not be used at all. I would be glad to support a resolution worded to the effect that the clause should be put in the same form as it was in P.C. 103.

Hon. Mr. MITCHELL: This bill and its wording is arrived at through our experience in the past, after consultation with organizations and all the provinces in Canada. These authorization cards have been mentioned and I will say that where you begin to organize a plant you may find that there are one or two or three organizations trying to obtain jurisdiction. An organizer comes along and he says to a man "you sign this authorization card and I will get you a $25 a month increase". That is the language which is used so that these men will understand. Another organizer comes along and says "you sign this card and I will get you $50 a month increase, the other fellow is a piker". That is the type of thing which creates these jurisdictional disputes about which my good friend Mr. Smith spoke in the House the other night. All the labour organizations with stability are satisfied with this clause. We should not come along here and try to defend a practice that is not working out very well. I think it is fair to say that all the board wants and all the unions want is to be fair. Mr. Croll and others have asked what is meant by the words "good standing". We know that in the labour movement powers are given to the general executive board for special dispensation with regard to the length of time a man is required to be in good standing. That exercise of discretion is given all the time. It may result in the good standing period being one month after the initiation is paid. I am firmly of the opinion that if you expect an organization to do something for you you should be prepared to pay the initiation fee and maintain your dues.

Mr. JOHNSTON: Have any of the labour unions objected to this?

Hon. Mr. MITCHELL: No.

Mr. JOHNSTON: I notice in the National Labour Code the language is almost the same as that used in the bill and I cannot see any objection.

Hon. Mr. MITCHELL: I think when P.C. 103 was drafted one of the errors I made was to give these authorization cards. I made the decision in the light of the conditions that then existed but I do not think they should be included here.

Mr. CASE: In almost any organization I think the words "in good standing" have an accepted meaning. The constitution, or something back of the union indicates that "in good standing" has a meaning. It must mean that you fulfil certain obligations, and I do not think that you can use better language.

Mr. MACINNIS: I would bring to Mr. Johnston's attention the fact that the Congress of Labour Code does ask for something else. I am reading part of subsection 5 of section 8 beginning about half way down "if the board is satisfied that at least 50 per cent of the employees in the unit affected by the application are members of the applicant trade union or have requested or authorized the applicant trade union as aforesaid, the board shall order a vote to be taken—". As a matter of fact that is what I suggest should be put in.

Mr. JOHNSTON: You suggest changing the word to "authorization"?

Mr. CROLL: That was the word used by P.C. 103.

Mr. SMITH: I am very much in favour of the clause as it stands. The words " in good standing" have a very simple meaning in any organization. You are either in good standing or you are not—you are a member by the approved method, the same as any other member, within the boundaries of the constitution. The moment you add such words as are now suggested by Mr. MacInnis you put upon the board an almost impossible task. A man has not paid his dues, or a man is not in good standing by reason of the fact he may have been expelled, and I think the words "in good standing" are the only sane and sensible ones—and the only ones of which I know—to provide for what we desire, and I am very much in favour of the clause as it stands.

Mr. LOCKHART: Over the week-end I had a discussion on this matter with a very active union man and I pointed out this phraseology to him. I asked him if it was in keeping with his ideas on trade unions and he said that "in good standing" would not mean you have to pay dues in advance. The regulations of the union to which a man may belong provide for that contingency, and a man may be a month behind in his dues for some specific reason, but that does not put him in bad standing. The regulations of the union to which he belongs provide that for a stated period a man must not become more than so long in arrears, but he is still in good standing although he may be a month or so behind in the actual payment of his dues. The man to whom I was talking said that if the union is good enough for the man to belong to he should be in good standing—that is a bona fide member of the particular union—and the words of this particular section cover the situation. I think myself the words are sufficient.

The CHAIRMAN: Shall clause (a) carry?

Mr. GILLIS: No, I think both the bill itself and the congress bill have far too many words and I think you are putting an impossible job on the board. The meat of this legislation will be in its administration and I do not know who the board is going to be. As I see this particular clause here unions which are organized now and which are bargaining are not affected, but there is a very small percentage of the eligible workers of this country who belong to organizations today. The figure is less than 40 per cent, so we can see the main job of organization of unions in this country has still to be done. As I see this clause, when a union organizer goes into a plant to organize it he has no legal rights. Under this section the organizer, in going into a plant to organize, has no legal rights and surely the employer can stop him. The man must remember his job and that organizer has to pick up 50 per cent or 51 per cent—a majority of the men in the plant or factory—and bring them into the organization. Remember while he is doing that he has no bargaining rights. The union has nothing and the man going in does so with the fear of losing his job. An organizer faced with that kind of a proposition is in a very difficult spot. When he makes application under this clause to the board—which may consist of four judges—

Hon. Mr. MITCHELL: That is provided for under the act.

Mr. GILLIS: You perhaps will call them commissioners, but he is making an application. The board tells him that according to this language here he must go in, have a hearing, bring his records with him, his books, and his membership cards. The hearing is held and the board is all-powerful. The board can determine whether the books, records and so forth meet the provisions of this act, and the organizer has got to do that job in a new union with almost no chance of success at the start. The organizer is in a weak position. The simple thing to do, if we believe in democracy, is to get rid of the verbage in the congress bill and in this bill. The verbage means nothing except it can be used as stumbling blocks by anyone who wants to put up those stumbling blocks. The board is the important thing and I think the board should have the privilege of ordering a vote in any plant or factory in this country, and the employees should have a right to cast a secret ballot as to whether they want to join a union. When that vote is taken the result will be clear. The minister can look at his seamen's strike right now and it arose out of this sort of thing. The Canadian Seamen's Union was certified without a vote, with the result that you have got two of those unions battling, and it is anarchy there today. If a vote had been taken the bargaining agent would have been clear and it would have avoided friction.

Hon. Mr. MITCHELL: I think I should correct you on that point. There was a vote.

Mr. GILLIS: The Seamen's Union—the Sarnia Steamship Lines?

Hon. Mr. MITCHELL: Yes.

Mr. GILLIS: Your letter to me was wrong then?

Hon. Mr. MITCHELL: You are talking about the Canadian Steamships?

Mr. CROLL: Here is the report.

Mr. GILLIS: The Canadian Steamships were involved in the strike and the bargaining agency was given without a vote.

Hon. Mr. MITCHELL: No.

Mr. CROLL: I wrote specifically and the answer which I obtained from you was very specific.

Hon. Mr. MITCHELL: It does not make any difference, there was a vote.

Mr. GILLIS: It does make a difference, there is a mess existing now.

Mr. LOCKHART: What about proceeding with this clause?

Mr. GILLIS: I am doing that, and I am just pointing out to you the difficulties which arise when you get away from democracy.

Mr. LOCKHART: You should stay on the beam.

Mr. GILLIS: That is where I am, and I say I am opposed to this section because it is too wordy. It will solve nothing. It is putting the organizer who has to go out and form a union in this country in a most impossible position. If we just cut out a lot of wording, and if the board is satisfied that a majority of the employees in that plant would want a vote in that plant for the purpose of saying whether they want to join a union, then I think the board should have the vote and put the organizer in a legal position. Once the board has given its certificate the organizer can go in and obtain membership without fear of losing his job. I went through all this in the Sudbury and Kirkland Lake areas and I know what you are up against, and this clause is not satisfactory. The clause vote is a determining factor and as far as I am concerned this clause will not work.

The CHAIRMAN: Shall clause (*a*) carry?
Carried.

Mr. GILLIS: On division.

The CHAIRMAN: Section 9, subsection 2, clause (*b*)—shall this section carry?
Carried.

Shall subsection 2 carry?
Carried.

Mr. GILLIS: On division.

The CHAIRMAN: Section 9, subsection 3:—

> Where an application for certification under this Act is made by a trade union claiming to have as members in good standing a majority in a unit that is appropriate for collective bargaining, which includes employees of two or more employers, the Board shall not certify the trade union as the bargaining agent of the employees in the unit unless
>
> (*a*) all employers of the said employees consent thereto; and
>
> (*b*) the Board is satisfied that the trade union might be certified by it under this section as the bargaining agent of the employees in the unit of each such employer if separate applications for such purpose were made by the trade union.

Shall clause (*a*) carry?

Mr. Croll: As I interpret clause (*a*) "all employers of the said employees consent thereto;—" that, in effect, gives an employer a veto power over industry-wide or country-wide bargaining. If there is only one employer in the industry he is obliged to bargain but if there is more than one industry he immediately has a veto and can stop it. Whether it is wise to leave the employer with the last word is a matter upon which I think the committee ought to consider. Should not that be discussed with the National Labour Board rather than with the employer? This is a matter of considerable concern to the country. This would obviously leave it in the hands of industry itself rather than in the hands of an impartial board.

Mr. Gillis: I wonder if the minister would explain what he has in mind?

Hon. Mr. Mitchell: You cannot force people. You cannot have one law for one side and a different law for the other side dealing with the same subject. You cannot force the trade union to join with another any more than you can force the employer to join with another employer. It acts both ways and I think it is elementary.

Mr. Gillis: You find today there is one corporation with perhaps twenty-five or thirty subsidiary companies. To all intents and purposes it is one corporation but they keep the other companies separate largely for tax purposes. Now if a union makes application for certification for the over-all industry or corporation as such, is that corporation in a position to say that this company or that company or the other company which are subsidiaries of theirs cannot be certified as a bargaining agency? Could that interpretation be put on it?

Hon. Mr. Mitchell: I would say yes.

The Chairman: Is the clause carried?

Mr. Gillis: No, I think there is a grievance in that particular section with the possibility of breaking up unions that are in existence. I am thinking, for example, of my own union, the Mine Workers.

Mr. Croll: Yes, and the packing houses.

Mr. Gillis: A man working on an over-all contract with Dosco coal or steamship lines and so forth, has an agreement on that basis today. Under this section the corporation could start to disintegrate the association and say that for Dominion Coal, you are going to have one agreement, for Nova Scotia Coal you are going to have another agreement. Such action could result in smashing an over-all agreement into six or seven agreements within one union. I think the clause is dangerous in that an employer could do that very thing if he wanted.

Hon. Mr. Mitchell: Let us take the other side of the picture. You are talking about Nova Scotia and do you suggest there should be one agreement with Dosco for the Halifax shipyards?

Mr. Gillis: For the mining industry.

Hon. Mr. Mitchell: For the steel industry, and the coal industry? I would think you would have some difficulty in getting the miners to join with the shipyard workers.

Mr. Gillis: I would not suggest that.

Hon. Mr. Mitchell: No, but I am following your argument there. I do not think it is wise or sound to insist that they should join without their consent. I am a great believer in common sense and co-operation, and I have seen—in connection with negotiations—that a lot of hypothetical difficulties are raised by both sides. However, I think the growth of the trade union movement in the last ten years is an indication of the importance of the difficulties you are anticipating at the moment. They are not real difficulties by hypothetical difficulties. You were talking a few moments ago about verbiage and a short act, but if we take into consideration all the hypothetical cases which are possible you will have an act as lengthy as is Anthony Adverse.

Mr. GILLIS: Let me correct the minister. I am thinking of the steelworkers' union which has contracts in basic steel plants and fabricating plants under the same manager. I am thinking about your mine workers who have over-all contracts with five different companies—Cumberland Coal and Railway, Nova Scotia Steel and Coal, and Nova Scotia Coal—they have over-all contracts with different companies. The same thing applies to steel, to textiles and to the packing houses. I think the employer could go to work on those and smash the contracts from province to province and disintegrate them.

Hon. Mr. MITCHELL: Like yourself I have had long trade union experience and when you talk about employers smashing this and that, I would remind you that there are tough people on both sides.

Mr. GILLIS: Yes.

Hon. Mr. MITCHELL: Taking the over-all picture I think that there are bound to be difficulties—if there were no difficulties there would need to be no unions and by the same token there would be no political parties—but I believe this act will be all right. I do not hold with the thinking that everyone is a scoundrel.

Mr. GILLIS: I was not saying so.

Hon. Mr. MITCHELL: But you are talking of smashing. I think we have been rather free from labour disputes in this country because of the ordinary honest-to-God common sense of the people in Canada. We don't want to go smashing each other.

The CHAIRMAN: Order, gentlemen. Will you give me one moment, please? I have observed that if the good habit of Mr. Croll and Mr. Gillis is followed by everybody, if they would rise to their feet when they address the committee, it would be much easier for the reporter to take down what they say.

Some Hon. MEMBERS: Hear, hear.

Mr. ARCHIBALD: I would like to ask the minister this; if, as he has told us, the employer now has this power of veto, why put it in? The minister is always arguing about the good sense of the employers and the employees. Why not leave it out altogether so that they could hammer it out? But this actually puts them in the position where they can block it, it leaves it wide open so that even when they come to a national agreement they still have the power to stop it. It is stymied. You have the company given the power of taking away the benefits of the bargaining agreement when you put it this way.

Mr. GILLIS: They could leave it out altogether. With the confidence the minister has in the good judgment of the employers and the employees, I think they might work the thing out themselves if they have the interest of the industry as a whole at heart. It looks to me here as though somebody thought that maybe it would not be a bad idea if they were to have the privilege of that veto of power.

Mr. CASE: I think this subsection has its purpose.

Mr. TIMMINS: But is that the proper language, Mr. Case, or, could the minister tell us something about that?

Hon. Mr. MITCHELL: It is in there for this very simple reason, that it prevents the possibility of an unwelcome agreement being forced on them. I think, as Mr. Gillis said this morning, it is a sound principle that you cannot have co-operation except on a voluntary basis, that you cannot force co-operation. What might happen is this, that you may have one plant that is well organized and another which may not be so well organized or may not be organized at all. You may have one plant where they want to sit down and reach an agreement and you may have other employers and other plants where they may not have an organization with which to effect that purpose. And I can say too that this has worked well in the past. And I would like to point this out too, if I may, while I am on my feet. I have to do a lot of talking in this committee . We have had conversations with all of the provinces in an attempt to arrive at a uniform legislation throughout the dominion, and I would regret it if we had to change this bill substantially after what has taken place in New Brunswick, Nova Scotia, British Columbia, Manitoba, Alberta and Ontario. I think we have a responsibility in that regard. As I say, this section has been in the bill for a long time and it has worked reasonably well.

Mr. SINCLAIR: Suppose you have a situation like with the mines in British Columbia. One employer says that he does not want to sign a national agreement. Now, the employees in that plant cannot force them to negotiate as an individual union?

Hon. Mr. MITCHELL: You speak about mining. You have a lot of these mining companies who are just opening up claims and who are not making sufficient money with which to pay any dividends. You make in a mine where the wage structure includes three thousand workers; and you may have in the industry a number of mines who are only in the organization stage. There can be a lot of argument backwards and forwards over a matter of this kind—

Mr. SINCLAIR: Is not that the main point; that if one of these employers does not want to sign one of these agreements, then his own employees could still force him to negotiate?

Hon. Mr. MITCHELL: Absolutely.

Mr. ARCHIBALD: I would like to bring up this point again, this matter of employer-employee consent. I do not think it is incorporated in here; that two or more employers have to bargain, and they have to agree before it can become effective. Now, it is quite conceivable in an industry-wide setup one unit could back out and hamstring the whole work. It could be set up as a dummy to ruin all negotiation; and we are now insisting that two or more employers or two or more companies have to bargain collectively, and if they say that we don't like this the way it is; that is all there is to it, they don't have to take it.

Mr. MACINNIS: Mr. Chairman, I do not think this deals exactly with bargaining. The section we are now dealing with has to do with the certification of a union and what happens if there are two or more employers and one of those employers objects to having the employees of any one union, or unions. Until they are certified there is no union; the board shall not certify the trade union as the bargaining agent of the employees in the unit unless, (a) all employers of the said employees consent thereto". Unless there is consent by the employers that they will bargain collectively with the bargaining agency which is asking for a certification there is no bargaining agency, there is no union to bargain with. That is exactly what the situation is. They will be certified to bargain with a particular employer. They will be certified to bargain with one or more employers, if the employers are agreeable; but they will not be certified to bargain with any combination of employers unless those employers are agreeable. Now, the point that we would decide I think in the matter of subsidiary organizations is, who is the employer; who is in fact the employer, the parent organization or the subsidiary division. Has the board or the department any instructions on that point? I looked up more than one section. I just refer to one point. The minister made the remark that he seems to be the target for a lot of criticism here—

Hon. Mr. MITCHELL: I didn't say that.

Mr. MACINNIS: All I can say is, this is the ministers' bill and there is no use in making everybody else a target for the minister. And I would like to assure him that I feel in the drafting of this bill he drafted the best bill he thought possible. I agree with that. I accept that. All I ask the minister to do is to keep in mind the thought that we are trying to make the bill a better bill; and I am ready to pool anything I have with the judgment of the other members of the committee. There is a definite point here which may cause trouble later on.

The CHAIRMAN: Shall the subsection carry?

Mr. GILLIS: I would move that the clause be deleted.

The CHAIRMAN: Pardon?

Mr. GILLIS: I would move that we delete this clause from the bill.

Hon. Mr. MITCHELL: What clause?

Mr. GILLIS: This clause (*b*) or clause (*a*) of section 9.

Mr. MACINNIS: Of subsection 3, of section 9.

The CHAIRMAN: Order.

Mr. GILLIS: The whole of subsection 3, of section 9.

The CHAIRMAN: It is moved by Mr. Gillis that the whole of subsection 3, of section 9, be deleted. Those in favour? Opposed?

The motion is defeated.

Shall the subsection carry?

Carried.

On subsection 4:

Board Examination and Inquiries

> (4) The Board may, for the purposes of determining whether the majority of the employees in a unit are members in good standing of a trade union or whether a majority of them have selected a trade union to be their bargaining agent, make or cause to be made such examination of records or other inquiries as it deems necessary, including the holding of such hearings or the taking of such votes as it deems expedient, and the Board may prescribe the nature of the evidence to be furinshed to the Board.

Mr. ADAMSON: Mr. Chairman, I just want to ask the minister and the department officials; this is one section which requires a vote. I would like some statement as to the method of voting, of carrying out that vote.

Hon. Mr. MITCHELL: Well, Mr. Adamson, this section deals particularly with the case where there may be two or more orgainzations, one of which would get the bargaining right. Employees may belong to one organization or the other, and in some cases they may belong to both organizations. We have had cases where there have been as many as three organizations asking to be certified. This subsection of the bill provides the procedure to be followed and the action to be taken in taking a vote. Of course, that vote is taken in the form of a secret ballot.

Mr. ADAMSON: Is the ballot taken in such a way that the choice is written on the ballot?

Hon. Mr. MITCHELL: Yes. As a rule we consult the officials concerned.

Mr. GILLIS: While you are on the matter of vote would the minister answer this: If a vote is taken under this section is a majority of those who cast ballots sufficient, or does this require a majority of all the employees?

Hon. Mr. MITCHELL: This is the employees in the union.

Mr. GILLIS: And those who don't vote are regarded as being against the union?

Hon. Mr. MITCHELL: Yes.

Mr. GILLIS: Isn't that absolutely unfair? Would that be fair in a federal election?

Hon. Mr. MITCHELL: Let us argue that out right now. Take the ordinary vote in an election. Of course, it is somewhat different in an election in a large constituency where there is not the same, shall I say, economic necessity for everybody voting. The situation is this, that you have only one candidate to vote for.

Mr. CROLL: You mean, only one union to vote for.

Hon. Mr. MITCHELL: I am talking about one union. I am merely using the word candidate instead of union. You and I have known cases where a union has a thousand members. This is for taking the decision of the organization. I think we cover that at a later stage. I think you must insist on the protection afforded by a section such as this.

Mr. GILLIS: If they are not interested enough to vote on the question of this kind there must be something wrong with them.

Hon. Mr. MITCHELL: If they are not interested enough to vote they should not have the bargaining right. That is my view. I do not think anybody should have a vested right—it becomes a vested right once it has certified—I do not think anybody should have a vested right to represent anybody unless the majority of the people involved approve. I know that brings up another argument. I know something about voting in employer-employee organizations, and it is a good thing. Under this procedure the union gets the bargaining rights without any fear of successful contradiction that they represent everybody in a plant.

Mr. GILLIS: Would there not be a chance of its being packed?

Hon. Mr. MITCHELL: I think that is unworthy of the honourable member. I take this view—

The CHAIRMAN: Order, please.

Mr. SMITH: Mr. Chairman, I think we are completely misinterpreting what this section says. I think some of the answers which the minister has given are quite wrong. I say that very respectfully. I think what the section means is this, that the board has its own jurisdiction and its own right to determine this question; that it is not necessarily wrong by the number of persons who vote or anything of that kind. If you read it, it is clear. We do two things; first, we determine the facts as to its members in good standing being a majority of a unit, and of their being members in good standing. That is the first point; whether the trade union represents a majority of the employees; and that the union selected shall represent a majority of the employees. Then it goes on and says that the board may make or cause to be made such examination of records or other inquiries as it deems necessary; including the holding of such hearings or the taking of such votes as it deems expedient, and the board may prescribe the nature of the evidence to be furnished to the board. Now, such a clause means just this; that the board is not trying to have a majority of the people working in the plant. It means this, that they by these various means, and such others as they see fit, will come to a conclusion as to whether or not the bargaining agent—that is what we are talking about—does in fact represent a majority. In other words, they are not bound by the vote. There is nothing in here about a secret ballot either; although perhaps we could assume they might do it that way. My point is, they do not have to. I think the clause is particularly well worded, it gives them a great and wide jurisdiction and the right to come to a conclusion as to whether in fact a majority of the employees are in favour of a particular bargaining agent. I submit with respect, Mr. Chairman, that no other interpretation of this clause than the one I have given can be taken from it. There is nothing in there about a secret ballot. There is nothing in there to the effect that they must have a majority; although that is very wise.

Hon. Mr. MITCHELL: If you will look at section 9, subsection 2, clause (*a*)—

Mr. SMITH: I am speaking about this clause at the moment, as it reads. There is nothing in there, except to say to the board by such means as you see fit; including an examination of the records, the taking of a vote, and such other information as you may see fit to require. Then, under that section, you cannot come to any other conclusion that is what the section means; and I do not think of a better way of wording it.

Mr. MACINNIS: Mr. Chairman, I am going to support this section because I think it brings in what we tried to bring in under subsection 2, clause (*a*), and for that reason I think it is a good section. The board is given wide latitude; at the same time I think the answer which was given to Mr. Gillis by the minister is quite right. We still have in this section the necessity of a majority of the employees being in the union.

The CHAIRMAN: Shall the subsection carry?

Carried.

> *Trade union influenced by employer*
>
> (5) Notwithstanding anything in this Act, no trade union, the administration, management or policy of which is, in the opinion of the Board,
>
> (*a*) influenced by an employer so that its fitness to represent employees for the purpose of collective bargaining is impaired; or
>
> (*b*) dominated by an employer;
>
> shall be certified as a bargaining of employees nor, shall an agreement entered into between such trade union and such employer be deemed to be a collective agreement for the purposes of this Act.

Shall section 5 carry?

Mr. CROLL: Mr. Chairman, just one minute. At its last sittings I think this, committee expressed itself pretty clearly on the question of company-dominated unions. That is what this is directed to. My suggestion is this, it reads this way:

> (5) Notwithstanding anything in this Act, no trade union, the administration, management or policy of which is, in the opinion of the Board,
>
> (*a*) influenced by an employer so that its fitness to represent employees for the purpose of collective bargaining in impaired; or
>
> (*b*) dominated by an employer;
>
> shall be certified as a bargaining agent of employees—etc.

In the main, that takes care of the usual type of company-dominated union, but there have been cases where the formation of unions is also involved by company domination. I think, because of that, it is necessary that we should have the word "formation" in there because that is a danger point. On the other hand, I would like the minister to let me know what happens when a union which is company-dominated is certified how do you uncertify them in this act? I have not been able to find anything. Is there anything in this act?

Hon. Mr. MITCHELL: I will have to say this, that comes under unfair practices in the act; and I would say that once a conviction is registered in the courts the order would be set aside and that would end the certification.

Mr. CROLL: That comes under what section?

Hon. Mr. MITCHELL: Section 11.

Mr. Croll: Let us see what section 11, says:

> 11. Where in the opinion of the Board a bargaining agent no longer represents a majority of employees in the unit for which it was certified, the Board may revoke such certification and thereupon, notwithstanding sections fourteen and fifteen of this Act, the employer shall not be required to bargain collectively with the bargaining agent, but nothing in this section shall prevent the bargaining agent from making an application under section seven of this Act.

That does not cover it. No. That is what I was bothered about there.

Hon. Mr. Mitchell: We will take a look at that and let you know.

Mr. Croll: All right. Would you allow section 5, to stand and let us go on, and we can come back to it later.

Mr. Smith: If we are going to let that section stand then I would ask you to take another look at the word impaired—"influenced by an employer so that its fitness to represent employees for the purpose of collective bargaining is impaired". No doubt you have a wonderful board, but what board is going to decide whether or not something is going to affect the effectiveness of a union to the extent that it will be impaired. I suggest that a better word might be used.

Mr. Croll: Can you suggest anything?

Mr. Smith: It is going to stand, and I am suggesting to the minister that he perhaps give the matter further study.

Hon. Mr. Mitchell: What about the word "prejudiced"?

Mr. Smith: If you are going to let the section stand, what I had in mind was that you might be able to find a better word.

The Chairman: Shall this subsection stand?

Stand.

Mr. Croll: Will you also give thought to the word "formation"?

Hon. Mr. Mitchell: Yes, that might be taken care of in another section of the bill.

The Chairman: Section 10: exclusive authority of certified union: Should clause (*a*) carry?

Carried. Should clause (*b*) carry?

Clause (*b*) carried.

Shall clause (*c*) carry?

Clause (*c*) carried.

Section 11, revocation:

Hon. Mr. Mitchell: We are going to look at that in connection with the other matter about which you spoke?

Mr. Croll: Yes, we had better let that stand. There is a lot of objection to the section.

The Chairman: Shall the section stand?

Stands.

Section 12: notice to negotiate—

NOTICE TO NEGOTIATE

Order parties to commence collective bargaining.

12. Where the Board has under this Act certified a trade union as a bargaining agent of employees in a unit and no collective agreement with their employer binding on or entered into on behalf of employees in the unit, is in force,

(*a*) the bargaining agent may, on behalf of the employees in the unit, by notice, require their employer to commence collective bargaining; or

(*b*) the employer or an employers' organization representing the employer may, by notice, require the bargaining agent to commence collective bargaining;

with a view to the conclusion of a collective agreement.

Mr. CROLL: I wonder if the minister would tell us what that section means?

Hon. Mr. MITCHELL: That section provides for the setting in motion of the machinery necessary for collective bargaining.

Mr. CROLL: Does that cover the rules of the procedure for the different things, or does it provide for making rules and regulations?

Hon. Mr. MITCHELL: That comes later on.

Mr. CROLL: All right, that is good.

The CHAIRMAN: Does this section carry?

Mr. MACINNIS: What happens if the other side refused to bargain?

Hon. Mr. MITCHELL: Then the conciliation procedure moves in. I put in a conciliator. If he fails to bring the parties together they set up a board of conciliation.

Mr. MACINNIS: Then what happens? I mean, after the board makes its decision? I have a case in mind about which the minister knows.

Hon. Mr. MITCHELL: Sure.

Mr. MACINNIS: We have seen what actually happens, and it seems that the government, or the department, is going to act in a situation. I speak of employees who make charges against a company.

Hon. Mr. MITCHELL: Let's put the boot on the other foot—I know the case about which you speak. We have just had a board of conciliation established on the railways. The majority report of that board recommended an increase of 7 cents an hour. The minority report recommended an increase of 20 cents an hour. The organization turned down the majority report, and I presume they would approve the minority report. From then on I presume they are going to try direct negotiations. Sometimes that does not happen and it is the other way around, one side says, we will use our economic strength; or, the other side does the same thing. Unless you are prepared to accept the principle of compulsory arbitration.

Mr. MACINNIS: Mr. Chairman, I think the minister has gone a little off the point with which I was dealing. As a matter of fact, this bill provides for compulsory arbitration, if you like; but it does not provide for compulsory acceptance of the arbitration award. We have to keep that in mind.

Hon. Mr. MITCHELL: It does on agreements.

Mr. MACINNIS: Now, I am in favour of compulsory arbitration; that is, to compel the employers and the employees to arbitrate their differences; but I am not at the moment prepared to say that if the decision is not satisfactory to one side or the other they are compelled to take it. Perhaps the situation I am talking about is where the employer is apparently ignoring the Department of Labour to the extent of telling them to go to—well—

Mr. Croll: Let us have it, "to go".

Mr. MacInnis: Yes, to go. If one employer can do that is there anything to prevent another employer from doing it; or, if one of the labour organizations wanted to do that, is there anything to prevent them from doing it? What is the procedure involved there?

Hon. Mr. Mitchell: That is made very clear in this bill, that if a board of conciliation cannot reach an agreement then it is referred to a board of arbitration. Where one of the parties to a dispute does not comply with an award the other party has the right to prosecute, to bring an action to enforce or compel the other party to comply with the conditions of the award. I know the case to which you were referring, that is the shipping case.

Mr. Gillis: That is the trouble with all labour legislation, there is no enforcement machinery.

The Chairman: We are discussing the notice to negotiate in cases where there have been no collective agreements and I would ask you to restrict your remarks to that particular section.

Mr. Gillis: I am, but the minister is explaining the bill and Mr. MacInnis objects. While we have established a lot of machinery we have not taken any steps to enforce action and I think it is absolutely unfair to expect labour organizations to go through the courts. That is a very costly procedure and I think if the Department of Labour lays down certain laws in respect to the matter of labour relations then enforcement should be obligatory on the part of the Department of Labour. Provincially it is the same thing.

Mr. Smith: Are you in favour of compulsory arbitration?

Mr. Gillis: I agree with Mr. MacInnis.

Mr. Smith: You are both in favour of compulsory arbitration.

Mr. Gillis: Just a moment, I think we should be big enough to enforce the laws we make.

Mr. Smith: I will go along with you there.

Mr. Gillis: I think there is ample machinery provided in this matter. I think someone in the Labour Department should receive a report, sum it up and say that one side is wrong in this matter and then, instead of forcing the employer or the employee into court, the department should say "this is the law and you are being unreasonable and the department is going to enforce this act". I think it is a matter of bringing the rule of law into labour relations and enforcing it. When we sit down here and write a bill which is to be the law we should be prepared to enforce it as against anyone who might break it.

Hon. Mr. Mitchell: I agree up to a point, but everybody is talking about enforcing the other fellow.

Mr. Gillis: I am talking about enforcing it as against everybody breaking the law.

Hon. Mr. Mitchell: If you will look at the record during the last four or five years you will see who is breaking the law. Like yourself, I have had some experience in the settlement of labour disputes and I think disputes are better settled without brass bands.

Mr. Gillis: It is not a good thing to settle with a lead pipe either.

Hon. Mr. Mitchell: That cuts both ways, or it did in Detroit the other day as far as the U.A.W. are concerned. I think the batting average has been pretty good. You cannot go contrary to what is the accepted and fundamental principle in trade union negotiations. I have a vivid recollection of the Ford strike where I got both employees and employers to agree to arbitration, and then the men's organization—for reasons best known to themselves—went back on the arbitration. I called Mr. Thomas in Washington and I asked him if he wanted compulsory arbitration and he said no. He said they opposed it in principle—he was speaking of the American labour movement. I told him to send someone up to negotiate. He sent in one of his ranking officials and the dispute was over in two weeks. Mr. Gillis cannot convince me, nor can Mr. MacInnis convince me, that the principle of compulsory arbitration is sound.

Mr. GILLIS: We are talking about two different things. You are talking about compulsory arbitration but I am talking about enforcement of the law.

The CHAIRMAN: Mr. MacInnis, I have allowed the minister to reply on the point but I suggest the point is quite away from the subject of the subsection we are discussing which is notice to negotiate. Is the section carried?

Carried.

Section 13—renewal or revision of current agreement or conclusion of new agreement?

Carried.

Section 14.

> 14. Where notice to commence collective bargaining has been given under section twelve of this Act
>
> (*a*) the certified bargaining agent and the employer, or an employers' organization representing the employer shall, without delay, but in any case within twenty clear days after the notice was given or such further time as the parties may agree, meet and commence or cause authorized representatives on their behalf to meet and commence to bargain collectively with one another and shall make every reasonable effort to conclude a collective agreement; and
>
> (*b*) the employer shall not, without consent by or on behalf of the employees affected, decrease rates of wages or alter any other term or condition of employment of employees in the unit for which the bargaining agent is certified until a collective agreement has been concluded or until a Conciliation Board appointed to endeavour to bring about agreement has reported to the Minister and seven days have elapsed after the report has been received by the Minister, whichever is earlier, or until the Minister has advised the employer that he has decided not to appoint a Conciliation Board.

Mr. CROLL: May I make the observation that in P.C. 103 the time was referred to as ten days instead of twenty days.

Mr. CHARLTON: The act last year stated fourteen days instead of twenty days.

Hon. Mr. MITCHELL: It was thirty days instead of twenty days.

Mr. CROLL: In any event here are the figures which I have computed in respect to what may possibly happen before a strike is called. This section provides twenty days before collective bargaining begins. There are then seven days for collective bargaining under the act and fourteen days for a conciliation officer to report—and that is not long—plus twelve days to appoint a conciliation board after the report of the conciliation officer. There are fourteen days for the conciliation board to report, and fourteen days after that under the act before a strike can be called. That is a total of eighty-one days. A worker can get pretty hungry in eighty-one days waiting around for something to happen.

Mr. Smith: He is not on strike yet.

Mr. Croll: No, I said before a strike.

Hon. Mr. Mitchell: You said he would get hungry.

Mr. Croll: I point out what we are trying to establish is a cooling off period during the highest tension between the parties. They are misunderstanding one another and what we are doing is providing time, but some of these times are far too long. Under section (*b*) the minister may or may not appoint a conciliation board as he chooses—he is not bound to appoint one. My suggestion is the times are too long extended under this act and we might, before we come to agreement as to the time, keep in mind all the operations that require attending to and we should know what the total period is.

Hon. Mr. Mitchell: That twenty days was put in there to take care of the trade union organizations. For instance, in the transportation industry the members are scattered across the dominion and their representatives have to travel great distances. My own view, too, is that they do not go on strike until this period is over, and I am a great believer in the cooling off period. Mr. Croll spoke about the tension and I think both sides act far differently at the end of the period. In my experience if you are given time to reflect and consider, while you think one thing this afternoon by tomorrow you will have changed your mind. Both sides must bring their principals together but you will notice that it does say you can commence collective bargaining without delay. They can start immediately. Do not forget this only deals with disputes but there are hundreds of agreements arrived at without any recourse to this legislation. This only deals with the situation where there is a dispute between the parties concerned and, in my experience, sometimes the longer you take the better will be the agreement. I know that when I drafted P.C. 1003 it was suggested that two weeks would be sufficient to take care of it but I said it would take six months.

Mr. Gillis: This code is not going to be applicable in any province which does not accept it. It covers very few industries as it stands. I know that the practice in many cases is that in the written agreement they have specified that thirty days notice would be given—before expiration of the contract—in which to enter into negotiations for a new agreement. Then of course, it has been the practice for some years even where the contract expires that it is renewed for a month or two months during the continuation of the negotiations. The act as it is at the present time is only going to be applicable to national industry. It is not going to affect any of the established agreements and I do not think it means very much. It may mean more in this province where you are setting up new unions where there are new contracts and inexperienced people. I am afraid of this cooling off period when you are dealing with new unions. I do not think the act will affect those who have collective agreements now because they have already written into their agreements all their conditions as to how negotiations are to be carried on, and nothing we do will prevent them from carrying on in that fashion.

The Chairman: Is the section carried?

Carried.

Section 15.

15. Where a party to a collective agreement has given notice under section thirteen of this Act to the other party to the agreement

(*a*) the parties shall, without delay, but in any case within twenty clear days after the notice was given or such further time as the parties may agree upon, meet and commence or cause authorized representatives on their behalf to meet and commence to bargain collectively and make every reasonable effort to conclude a renewal or revision of the agreement or a new collective agreement; and

(*b*) if a renewal or revision of the agreement or a new collective agreement has not been concluded before expiry of the term of, or termination of the agreement, the employer shall not, without consent by or on behalf of the employees affected, decrease rates of wages, or alter any other term or condition of employment in effect immediately prior to such expiry or termination provdied for in the agreement, until a renewal or revision of the agreement or a new collective agreement has been concluded or a Conciliation Board, appointed to endeavour to bring about agreement, has reported to the Minister and seven days have elapsed after the report has been received by the Minister, whichever is earlier, or until the Minister has advised the employer that he has decided not to appoint a Conciliation Board.

Mr. SMITH: I wonder if we have not gone a little too far in this middle line—"if a renewal or revision of the agreement or a new collective agreement has not been concluded before the expiry of the term of, or termination of the agreement, the employer shall not, without consent by or on behalf of the employees affected, decrease rates of wages, or alter any other term or condition of employment in effect immediately prior to such expiry—" I was just wondering if we have not gone too far. Let us assume that holidays with pay might be one of the things upon which they would be bargaining. I would not want to see the employer able to cut it down but I would not want to see him precluded from increasing the holidays. That is a condition of employment and he is not allowed to alter that condition at all. I am, in short, not in favour of him altering against the employee, but I am against him being precluded from altering it in favour of the employee.

Hon. Mr. MITCHELL: We thought that if the employer wanted to improve the holidays with pay there would be no objection from the employee, but we put in the words regarding the decreased rates of wages because most objections are in respect of that item.

The CHAIRMAN: Shall the section carry?

Carried.

Section 16.

16. Where a notice to commence collective bargaining has been given under this Act and

(*a*) collective bargaining has not commenced within the time prescribed by this Act; or

(*b*) collective bargaining has commenced;

and either party thereto requests the Minister in writing to instruct a Conciliation Officer to confer with the parties thereto to assist them to conclude a collective agreement or a renewal or revision thereof and such request is accompanied by a statement of the difficulties, if any, that have been encountered before the commencement or in the course of the collective bargaining, or in any other case in which in the opinion of the Minister it is advisable so to do, the Minister may instruct a Conciliation Officer to confer with the parties engaged in collective bargaining.

Mr. CROLL: What I have to say applies to both 16 and 17. I think the committee should be aware of the change here. In P.C. 103 the word "shall" was used in all cases where the word "may" is being used now. What is happening is that the minister is now having pretty wide discretion and I think that the power is being given to the minister and taken away from the board. I think that is a mistake, and I think the power should be with the board and not with the minister. I do not think the minister wants that power. Conciliation, as we have repeated time and again, is the very heart of this bill. Conciliation must not only be sure but final and quick, and the use of the word "shall" meant that the minister was bound to go through the procedure but now, in fact, he can use his discretion and he becomes almost the law.

Mr. JOHNSTON: What is the legal definition of the word "may". It has come up in the House so many times that I am rather confused?

Mr. CROLL: It would mean two different things.

Mr. JOHNSTON: The Minister of Agriculture gave it the same meaning.

Mr. CROLL: It may have the same meaning with respect to agriculture but I am sure it does not have the same meaning with respect to Industrial Relations.

Mr. SMITH: The Supreme Court of Canada once said that "may" in our legislation may mean "shall".

Hon. Mr. MITCHELL: I have taken the advice of the legal gentleman and "may" means "shall". The Justice Department says that the word "may" is satisfactory here.

Mr. JOHNSTON: It can be interpreted as being either one or the other.

Hon. Mr. MITCHELL: Yes.

Mr. CROLL: Did the Justice Department give that opinion in relation to P.C. 103?

Hon. Mr. MITCHELL: You fellows change your minds so often that it is hard to keep up with you. I have found that in a dispute the best thing is to put a commission in right away and I have done so many times and in many disputes. Perhaps the quickest and most expeditious way of settling a dispute is by the appointment of a commissioner rather than by the establishment of a board of conciliation. I think the minister should have that discretion.

The CHAIRMAN: Shall section 16 carry?

Carried.

Mr. ADAMSON: On a point of order, Mr. Chairman, we have some six minutes left before the adjournment. I wonder what is happening about the tabling of these briefs. I have received a brief which I wish to table with respect to the engineers.

The CHAIRMAN: The deadline set by the committee is next Thursday and we thought the steering committee should not meet before that time.

Mr. ADAMSON: Do I table this brief with you today?

The CHAIRMAN: Yes.

Section 17—"Conciliation officer failing then conciliation board". Shall the section carry?

Carried.

Section 18.

> 18. A collective agreement entered into by a certified bargaining agent is, subject to and for the purposes of this Act, binding upon
>
> (*a*) the bargaining agent and every employee in the unit of employees for which the bargaining agent has been certified; and
>
> (*b*) the employer who has entered into the agreement or on whose behalf the agreement has been entered into.

Mr. Croll: This is a pretty difficult section and I am not sure that I understand it.

Mr. Smith: I understand it too well, that is my difficulty.

Mr. Gillis: It sounds all right to me so there must be something wrong with it.

Mr. Croll: Would you mind letting section 18 stand?

Mr. Gillis: I was surprised you fellows wrote that provision.

The Chairman: Is it agreed that section 18 stand?

Stand.

Section 19.

> 19. (1) Every collective agreement entered into after the commencement of this Act shall contain a provision for final settlement without stoppage of work, by arbitration or otherwise, of all differences between the parties to or persons bound by the agreement or on whose behalf it was entered into, concerning its meaning or violation.
>
> (2) Where a collective agreement, whether entered into before or after the commencement of this Act, does not contain a provision as required by this section, the Board shall, upon application of either party to the agreement, by order, prescribe a provision for such purpose and a provision so prescribed shall be deemed to be a term of the collective agreement and binding on the parties to and all persons bound by the agreement and all persons on whose behalf the agreement was entered into.
>
> (3) Every party to and every person bound by the agreement, and every person on whose behalf the agreement was entered into, shall comply with the provision for final settlement contained in the agreement and give effect thereto.

Mr. Croll: I move we adjourn before we discuss this.

Mr. Adamson: I suggest this section stand. This whole subsection on collective agreements is a very important part of the bill and as the committee is adjourning in two minutes I suggest this section stand and be discussed at our next meeting.

The Chairman: Do I understand, Mr. Croll, that you will be in a position to discuss section 18 at the next meeting?

Mr. Croll: Yes.

The Chairman: The business at the next meeting will be sections 18 and 19.

Mr. Croll: When will you deal with the resolution that we did not deal with this morning? Will you deal with it when you have finished the bill or before?

The Chairman: I assume we will deal with it when we have concluded an examination of the bill and we will come back to the sections which have been allowed to stand.

The meeting adjourned to meet again Thursday, May 6, 1948 at 10.30 a.m.

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" on, 1947/48

SESSION 1947-48

HOUSE OF COMMONS

STANDING COMMITTEE

ON

INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE -reports-

No. 4

Bill No. 195—The Industrial Relations and Disputes Investigation Act.

THURSDAY, MAY 6, 1948

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Minutes of Proceedings and Evidence No. 1, Tuesday, April 27, 1948: Page 8, line 23,—For *could* read *should.*

MINUTES OF PROCEEDINGS

THURSDAY, 6th May, 1948.

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. The Chairman, Mr. P. E. Cote, presided.

Members present: Messrs. Archibald, Black (*Cumberland*), Bourget, Case, Charlton, Cote (*Verdun*), Croll, Dechene, Dickey, Gauthier (*Nipissing*), Gillis, Johnston, Knowles, Lapalme, Lockhart, MacInnis, Maloney, Merritt, Mitchell, Pouliot, Ross (*Hamilton East*), Sinclair (*Vancouver North*), Smith (*Calgary West*), Timmins.

In attendance: Mr. A. MacNamara, Deputy Minister, and Mr. M. M. MacLean, Department of Labour, Ottawa.

The Chairman read a letter dated 30th April from The Canadian and Catholic Confederation of Labour stating that the important points of Bill No. 195 were covered in their representations of last year on Bill No. 338.

The Committee resumed consideration of Bill No. 195.

Clause 18.—Stood over.
Clause 19.—Stood over.
Clause 20.—Carried.
Clause 21.—Carried.
Clause 22.—Carried.
Clause 23.—Stood over.
Clause 24.—Carried.
Clause 25.—Carried.
Clause 26.—Carried.
Clause 27.—On motion of Mr. Smith,

Resolved,—That the Department of Labour be requested to prepare an amendment providing for the use of the plural form, or sense, of "conciliation officer" in this and relative clauses.

Carried subject to the provision in the above motion.
Clause 28.—Carried.
Clause 29.—Carried.
Clause 30.—Carried.
Clause 31.—Carried.
Clause 32.—Mr. Merritt moved that Section (8) thereof be deleted.

The Chairman read a letter dated 30th April, from the Law Society of Upper Canada relative to section (8). He also referred to similar representations received from other provincial law societies.

On motion of Mr. Smith, consideration of the proposed amendment was adjourned.

The Committee adjourned at 12.40 o'clock p.m., to meet again at 10.30 o'clock a.m., Tuesday, May 11.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

House of Commons,
May 6, 1948.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Chairman, Mr. Paul E. Cote, presided.

The Chairman: Gentlemen, I wish to place on the record the reply which I have received from The Canadian and Catholic Confederation of Labour. It is contained in a letter dated April 30, 1948, addressed to the Chairman.

> Dear Mr. Cote,—I have received your letter dated April 23 relating to Bill No. 195 inviting the C.C.C.F. to express its views before the Committee on Industrial Relations, should it wish to add comments to the brief it forwarded last year when the original bill on federal industrial relations was introduced in the House of Commons.
>
> I have been directed by the C.C.C.F. to advise you that all the important points having been discussed in last year's brief, it bides by the opinions then expressed, and does not deem it expedient to present a further brief which would be on the whole a repetition of things already stated.
>
> I thank you for having got in touch with our organization in connection with bill No. 195, thus providing it with all the latitude desired to make known its opinion.
>
> Yours very truly,
>
> (Sgd.) GERARD PICARD,
> *President.*

This is a translation of the original letter.

Now, our order of business this morning starts with consideration of clause 18, collective agreements.

Mr. Croll: Section 18 stands, as I understand it.

The Chairman: At the close of the last meeting, Mr. Croll, I asked the committee if they would be willing to consider sections 18 and 19 today. We touched upon those sections at the last meeting, and it was asked that they stand.

I have no objection to allowing it to stand if the committee is not prepared to revert to consideration of section 18 this morning. We could allow it to stand as we have done with the other sections.

Mr. Croll: The meaning of section 18 is a difficult one and it revolves around a Privy Council case of 1931, giving meaning to the words. I have not had a chance to read the case and I should like to have an opportunity of reading it before giving an opinion. I should like to have the section stand, for that reason.

Hon. Mr. Mitchell: I believe we should allow both these sections to stand. Let us get along with those things upon which we can agree.

The Chairman: Shall section 18 stand?

Section 18 stands.

Hon. Mr. Mitchell: I am going to make this suggestion, so the members of the committee can consider it during the course of the meeting. There is an election in Ontario and there are elections elsewhere. I assume some of the members will find it necessary to be absent. Perhaps we could meet more frequently during the next week and try to get this bill cleaned up so the members would be free.

Mr. MacInnis: If Mr. Mitchell wants to take part in the election—

Hon. Mr. Mitchell: I included us all in that remark.

Mr. Knowles: It might be better for us all if we stayed here.

Hon. Mr. Mitchell: I do not know about that. I sometimes think it might be better if some of us were away from here.

The Chairman: Would you have any suggestions to make?

Hon. Mr. Mitchell: Perhaps at the end of the meeting; we might consider it in the meantime and then make a decision. I believe we can clean up this bill next week.

The Chairman: Section 19 stands.

Section 20, subsection (1).

> *Agreement deemed for term of one year*
>
> 20. (1) Notwithstanding anything therein contained, every collective agreement, whether entered into before or after the commencement of this Act, shall, if for a term of less than a year, be deemed to be for a term of one year from the date upon which it came or comes into operation, or if for an indeterminate term shall be deemed to be for a term of at least one year from that date and shall not, except as provided by section ten of this Act or with the consent of the Board, be terminated by the parties thereto within a period of one year from that date.

Hon. Mr. Mitchell: I will tell you the purpose of that. It creates stability. Once an agreement is negotiated, it runs for a year. It prevents what you might call jurisdictional disputes. You notice in subsection (2), it does not say anything about them having a meeting on the terms of the agreement. We feel there should be a minimum period of one year. It is standard practice.

Mr. MacInnis: Does this mean that no collective agreement could be made for a period of less than one year and that any such thing as the 30-day clause is out?

Mr. Croll: If you do that, then you are in difficulty when you come to decertify. After ten months, you can make a new application and it has always been the practice to have some standard time. It has always worked out pretty well that way. I would say it was all right.

Hon. Mr. Mitchell: I will tell you what the experience has been in the United States. We have not had the experience here. Under the United States legislation, it is found votes are taking place continually and there is confusion all the time. Once the bargain is decided upon and there is an agreement, let them try it out for a year. If they do not like that, provision is made in the Act and a vote can be taken.

The Chairman: Shall the subsection carry?

Carried.

Subsection (2). Revision other than that of the term.

Shall this subsection carry?

Carried.

Section 21, strikes and lockouts.

Conditions Precedent to Strike Vote, Strike or Lockout.

21. Where a trade union on behalf of a unit of employees is entitled by notice under this Act to require their employer to commence collective bargaining with a view to the conclusion or renewal or revision of a collective agreement, the trade union shall not take a strike vote or authorize or participate in the taking of a strike vote of employees in the unit, or declare or authorize a strike of the employees in the unit and no employee in the unit shall strike, and the employer shall not declare or cause a lockout of the employees in the unit, until

(*a*) the bargaining agent and the employer, or representatives authorized by them in that behalf, have bargained collectively and have failed to conclude a collective agreement; and either

(*b*) a Conciliation Board has been appointed to endeavour to bring about agreement between them and seven days have elapsed from the date on which the report of the Conciliation Board was received by the Minister; or

(*c*) either party has requested the Minister in writing to appoint a Conciliation Board to endeavour to bring about agreement between them and fifteen days have elapsed since the Minister received the said request and

 (i) no notice under subsection two of section twenty-eight of this Act has been given by the Minister, or

 (ii) the Minister has notified the party so requesting that he has decided not to appoint a Conciliation Board.

Mr. LOCKHART: Could I ask the minister if he feels that the time allotted in these various sections is about the best that can be done? Is that his firm conviction?

Hon. Mr. MITCHELL: That has been our experience, Mr. Lockhart. I should like to point this out, clearly, too. I think it was Mr. Smith who raised the question in the House of Commons on the question of the sympathetic strike. This section outlaws the sympathetic strike.

Mr. CROLL: I do not understand that.

The CHAIRMAN: Shall the section carry?

Carried.

Section 22, subsection (1)

No Strikes and Lockouts While Agreement in Force.

22. (1) Except in respect of a dispute that is subject to the provisions of subsection two of this section

(*a*) no employer bound by or who is a party to a collective agreement, whether entered into before or after the commencement of this Act, shall declare or cause a lockout with respect to any employee bound by the collective agreement or on whose behalf the collective agreement was entered into; and

(*b*) during the term of the collective agreement, no employee bound by a collective agreement or on whose behalf a collective agreement has been entered into, whether entered into before or after the commencement of this Act, shall go on strike and no bargaining agent that is a party to the agreement shall declare or authorize a strike of any such employee.

Shall the subsection carry?

Mr. JOHNSTON: It seems to me that is the subsection which refers to the sympathetic strike.

Hon. Mr. MITCHELL: It does, too.

Mr. CROLL: Carried.

The CHAIRMAN: Carried.

Subsection (2).

Where Dispute Respecting Revision of Agreement.

(2) Where a collective agreement is in force and any dispute arises between the parties thereto with reference to the revision of a provision of the agreement that by the provisions of the agreement is subject to revision during the term of the agreement, the employer bound thereby or who is a party thereto shall not declare or cause a lockout with respect to any employee bound thereby or on whose behalf the collective agreement has been entered into, and no such employee shall strike and no bargaining agent that is a party to the agreement shall declare or authorize a strike of any such employee until

(*a*) the bargaining agent of such employees and the employer or representatives authorized by them on their behalf have bargained collectively and have failed to conclude an agreement on the matters in dispute; and either

(*b*) a Conciliation Board has been appointed to endeavour to bring about agreement between them and seven days have elapsed from the date on which the report of the Conciliation Board was received by the Minister; or

(*c*) either party has requested the Minister in writing to appoint a Conciliation Board to endeavour to bring about agreement between them and fifteen days have elapsed since the Minister received the said request and
  (i) no notice under subsection two of section twenty-eight of this Act has been given by the Minister, or
  (ii) the Minister has notified the party so requesting that he has decided not to appoint a Conciliation Board.

Shall this subsection carry?

Mr. LOCKHART: May I ask the same question of the minister at this point? Do you think seven days is enough?

Hon. Mr. MITCHELL: Yes.

The CHAIRMAN: The subsection carried.

Section 22?
Carried.

Section 23, subsection (1).

No Employee to Strike Until Bargaining Agent Entitled to Give Notice To Employer to Commence Collective Bargaining.

23. (1) No employee in a unit shall strike until a bargaining agent has become entitled on behalf of the unit of employees to require their employer by notice under this Act to commence collective bargaining with a view to the conclusion or renewal or revision of a collective agreement and the provisions of section twenty-one or twenty-two of this Act, as the case may be, have been complied with.

Mr. KNOWLES: May I call attention to the comment which the C. C. L. brief made about this clause. I have no doubt that you, Mr. Chairman, and perhaps the minister have studied it. The general position taken by the C. C. L. seems to be that there seems to be a difference in the prohibition against employees and the prohibition against employers. It would seem that there is only one limitation placed upon employers, namely, that they shall not declare or cause a lockout while an application for certification is pending before the board but, at any other time, it would appear that the employer can declare or cause a lockout.

On the other hand, the prohibition against the employee striking seems to be much more pervasive.

Hon. Mr. MITCHELL: The employer cannot break the agreement. It is covered by the Act, sections 21 and 22.

Mr. MACINNIS: Have you put that in, provided the provisions of section 21 or 22 of this Act have been complied with?

Hon. Mr. MITCHELL: I have not got the sections in my mind, but I believe if you go farther back you will find it says you cannot change working conditions or wages until you have resorted to a conciliation board. It is covered very clearly there.

Mr. MACINNIS: Is there any objection to adding the provision which you have in section 1 to section 2, and you remove any semblance of discrimination?

Hon. Mr. MITCHELL: Could we allow that to stand while I have a look at it to make sure there is no repetition?

The CHAIRMAN: Shall the section stand?

Stand.

Section 24.

Trade union not entitled to bargain not to declare strike.

> 24. A trade union that is not entitled to bargain collectively under this Act on behalf of a unit of employees shall not declare or authorize a strike of employees in that unit.

Mr. CROLL: Mr. Chairman, I have some objection to that. I think this section is bad. I think I know what the minister is trying to get at. He is trying to get at the minority unions, but he is getting at them a little too well.

I believe this section means that an uncertified union cannot strike. Now, there are a great number of unions in this country which are uncertified and they remain uncertified. They have been that way for a great number of years. If we pass such a section, it will mean there will be a rush to the board immediately for purposes of certification. I do not believe it makes any difference whether they are certified or not, if they have had an agreement. It is a matter of procedure, and I do not think it should be vital. I think that is the first result you are going to get from this section.

The second point is that, I think The Wartime Prices and Trade Board laid down the regulation, if I recall, that there was no certification for short-time positions. Take a contractor, for instance, who may have a six months' or four months' job; that means his employees will be deprived of having union conditions because they cannot get certification. In any event, they will be deprived of the privilege of striking because they cannot get certification due to the time limitation. That is one decision made by The Wartime Prices and Trade Board.

We are trying to deal with minority unions, but we are taking the right to strike away from people who should have that right. I think section 24 should not be allowed to pass with the phraseology it has at the present time because it may lead to conditions which do not fit into our modern way of life. I would suggest, particularly, that if you do not want to deal with the section now, you allow it to stand. On the other hand, I have serious objection to it and it may be that some other members have some views on it.

Hon. Mr. MITCHELL: In the first place, I do not know what The Wartime Prices and Trade Board has to do with this legislation?

Mr. CROLL: Did I say The Wartime Prices and Trade Board? I am sorry, I meant the Wartime Labour Board.

Hon. Mr. MITCHELL: I must say that I have no knowledge of a case such as that to which you refer in the case of general contractors. I have been very close to the construction industry all my life. The general practice in Canada is to negotiate an agreement on the 1st of May for the year. I know of no case where conditions such as you mention have arisen.

Then, there is another angle to it. You can get an organization which says, "We do not care about certification."

Mr. CROLL: Are the railroad labour unions certified?

Hon. Mr. MITCHELL: Oh, yes.

Mr. CROLL: Everyone of them?

Hon. Mr. MITCHELL: Some of them.

Mr. CROLL: But some are not.

Hon. Mr. MITCHELL: Take the railroad industry, since you raise the point. The mere fact an organization is not certified does not place it outside the law.

Mr. CROLL: It places it outside this section.

Hon. Mr. MITCHELL: It says,

> A trade union that is not entitled to bargain collectively under this Act on behalf of a unit of employees shall not declare or authorize a strike of employees in that unit.

Mr. MACINNIS: I am not clear in my own mind about this. If this Act requires that all trade unions to be entitled to bargain collectively must be certified under this Act, then this section would prevent any action by a trade union, no matter what procedure it had gone through and no matter how long it had been in existence prior to this Act coming into effect. I have in mind the union to which I belong, myself, the street railwaymen's union. We have had collective agreements with the company since 1898. I am fairly sure that the union is not certified under this Act. It has never received any certification because, when it came into being and, as it carried on, no certification was necessary. It was recognized as the bargaining agent.

Under this Act, even if the local of the Street Railwaymen's Union anywhere in Canada has gone through all the procedure legally required of it except being certified, it could not go on strike because of this section.

Mr. JOHNSTON: It could not be the bargaining agent unless it was certified.

Mr. MACINNIS: It is the bargaining agent and it is recognized as such. It is the bargaining agent now and it has a collective agreement with the company. The agreement is recognized.

There should be a period of time allotted, I think, during which unions which are not now certified could make application to be certified. I do not think they should be prevented from taking action which is normally theirs because this Act has been put on the statute books.

Hon. Mr. MITCHELL: If you look at section 15,

> Where a party to a collective agreement has given notice under section 13 of this Act to the other party to the agreement—

That covers the case of which you speak. They go through the normal procedure of conciliation. That section is there, so I think it covers the case pretty well.

Mr. GILLIS: I do not think it does. I think it only deals with notification for the renewal of a collective agreement. This section is rather rigid. If interpreted literally, it could mean that the unions of this country that have had bargaining rights with their employers for the last fifty years must now make application for certification.

It is not to be interpreted that way?

Hon. Mr. Mitchell: No. It is aimed at covering such situations as the possibility of a break-away group in a union like the mine workers union.

Mr. Gillis: I was going to say that my interpretation of this section would be to prevent the raiding of a certified and authorized union. Where there is a collective agreement, a new group cannot come in and wedge its way into the plant until it gets sufficient strength to interrupt operations. A small uncertified group could not cause a strike and interrupt the authorized union in the plant. I think that is what this section is designed to do.

Hon. Mr. Mitchell: I think the point was raised by Mr. Adamson the other day, the same point you are raising now.

Mr. Gillis: That is my conception of the section. Unfortunately, the minister does not interpret the section. Once the board gets it the board puts its own interpretation on it. However, it is understood that unions such as the railroad workers, the mine workers and the steel workers, who have never bothered with certification but who have collective agreements, are not to be interfered with?

Hon. Mr. Mitchell: No.

Mr. Croll: I am very glad you and the minister have an understanding. It is going to make it easier.

The Chairman: Shall this section carry?

Mr. Croll: I think the whole section should be out.

Hon. Mr. Mitchell: That has been the bugbear of responsible trade unions in this country, the raiding of these organizations by other people. It can be easily done, as Mr. Gillis and Mr. Smith and Mr. MacInnis and I know quite well.

Mr. Gillis: Nothing more simple.

Mr. Smith: It was done in the coal mining industry by the O.B.U., threw your outfit right out of the Dominion of Canada.

Hon. Mr. Mitchell: I remember that.

The Chairman: Is the section carried?

Carried.

Section 25. Suspension or discontinuance of operations.

Is the section carried?

Carried.

> 26. Notwithstanding anything contained in this Act, any employee may present his personal grievance to his employer at any time.

Is the section carried?

Mr. Knowles: I think we should pause a moment on this one. It seems to me that while it does seem plausible and high principled it does bring into question the whole question of collective agreements.

Mr. Case: You would not want to deny an employee the right to present his personal grievance to his employer?

Mr. Archibald: The C.C.F.L. take objection to it. They say that though that section deals with the individual there is nothing in there to permit of grievance procedure collectively.

Hon. Mr. Mitchell: That is earlier in the Act. I think it is fundamental. You were not here the other day, Mr. Knowles, when I expressed my opinion on it. We have heard a lot about fundamental rights and freedoms, whatever they call it.

Mr. Knowles: I was in another committee talking about the same thing.

Hon. Mr. Mitchell: There is no law in this country that is going to stop me from talking to the devil himself if I want to. I think that is fundamental.

The Chairman: Is the section carried?

Carried.

> 27. Where a Conciliation Officer has, under this Act, been instructed to confer with parties engaged in collective bargaining or to any dispute, he shall, within fourteen days after being so instructed or within such longer period as the Minister may from time to time allow, make a report to the Minister setting out
> (*a*) the matters, if any, upon which the parties have agreed;
> (*b*) the matters, if any upon which the parties cannot agree; and
> (*c*) as to the advisability of appointing a Conciliation Board with a view to effecting an agreement.

Mr. MacInnis: Does that not interfere with the time limit set for certain stages of the dispute? The time limit here is at the absolute discretion of the Minister of Labour, and while we may admit that the present Minister of Labour would not prolong unduly a situation of this kind we may not be so fortunate as to have a Minister of Labour of this kind always.

Mr. Case: He might be a C.C.F. man.

Mr. MacInnis: My friend, Mr. Case, might be Minister of Labour and we would not feel so easy about it. I have an objection, unless there is some satisfactory explanation, to the absolute discretion given to the Minister of Labour in this matter.

Hon. Mr. Mitchell: It happens from both sides. Frankly, since I have been in the portfolio, we have not had much difficulty. We may have had better luck than other people, but sometimes you will get an organization which will say, "Can you give us another three or four days? Can you give us another week?" I know in the mining dispute, Mr. Gillis, we dragged along the negotiations there for eight months, but reached an agreement that they were satisfied with. I do not think you can write common sense into a bill. You have got to give the minister some leeway.

Mr. MacInnis: Is that your view of the bill?

Mr. Case: We have to write common sense into the minister.

Hon. Mr. Mitchell: I think you have got to give the minister discretion as to what is the natural thing to do. He must be able to talk to both sides. One side may say, "We are having some little difficulty. We think we can reach an agreement without even a conciliation board if you will give us another week or a couple of weeks or a couple of days." I call that common sense. This is legislation. I think the minister should be given some discretion because after all is said and done if you get the kind of minister that some of you think you might get the bar of public opinion and elections take care of those kind of people.

Mr. Johnston: Could there be a time limit put in there?

Hon. Mr. Mitchell: There is a limit of fourteen days.

Mr. MacInnis: Could you not have some such phrase as "with the consent of the parties to the dispute"?

Mr. Case: Is that not what it implies now?

Mr. Smith: I am very much in favour of letting the section remain as it is. You have your conciliator working hard and running from one side to the other and he comes to the place where he thinks he is going to make it. Without this provision he would be chopped off. He would be functus officio. That is a term that Mr. Croll will explain to you people who do not know what it means. He is finished, whereas if he had another week or two weeks or so he might bring about a satisfactory result. Surely the minister is not just going to be an automaton, and push a button and say "that thing is ended, now we go to the other one." I think this is designed and well worded to take care of exactly what I am talking about.

Mr. MacInnis: I am not going to put my understanding of legal phraseology against that of Mr. Smith, but I should like to know what this does to subsection B of section 21, which reads:

> A conciliation board has been appointed to endeavour to bring about agreement between them and 7 days has elapsed from the date on which the report of the conciliation board was received by the minister.

Hon. Mr. Mitchell: That is the board. We are talking about the conciliation officer here.

Mr. MacInnis: Yes, but I should like to point this out, too. One of the objections that has been made over the last few years is that the settlement of disputes has been carried over too long a period until one side or the other is worn out with delays. I see no reason why there should not be some provision here that the consent of the parties to the dispute should be required for the continuing of the dispute. Under this section the minister can set aside any time in his discretion, "Within such longer period as the minister may from time to time allow, make a report to the minister," and so on.

Hon. Mr. Mitchell: Is that not the logical thing to do? I get this so often that perhaps I took too much for granted and did not explain it fully. You get the parties. They meet. You say, "Well, I will see if I can get the other people to go along with that point of view." Disputes have been settled so often by giving the minister discretion, sometimes against the advice of one side or the other. That is bound to crop up, but as I have said before you cannot legislate for the exceptions to the rule. The legal people tell me that is bad law, but in my own experience with the federal department, irrespective of the party in power, and my experience goes back over a good many years, I cannot say I have had any difficulty.

Mr. MacInnis: I can give you a case in point.

Hon. Mr. Mitchell: I was going to suggest that the Bible has exactly the same view, the C.C.L. brief.

Mr. MacInnis: In the national steel dispute two years ago that dispute was carried on from one week to another with the hope that the employees would be starved out and go back to work.

Hon. Mr. Mitchell: Oh, no.

Mr. MacInnis: Well, I just happen to know.

Hon. Mr. Mitchell: They were actually on strike.

Mr. MacInnis: This may be the same thing. The company may say, "We will hold out for a while. We will not do anything yet. We think we can bring them to time without making this concession or that concession."

Mr. Gillis: Without agreeing or disagreeing with anybody, I think this is designed to prevent strikes. My experience has been that this kind of action is the kind of action that is necessary to prevent a general mix-up. I think what this is designed to do is this. When both parties notify each other that their agreement is terminating at a certain date then there are points of conflict where they cannot come together. I have always found that someone sent in from the outside, who is trained as a conciliation officer, can sit in between the two contending parties, can get them together and resolve their difficulties and the parties can save face without backing up. Within fourteen days that conciliation officer is going to have a fairly comprehensive picture of what the difficulties are. He makes a report to the minister, and if he has not resolved the difficulty the minister then decides on the basis of the evidence submitted to him that a conciliation board is necessary. He appoints that board. The conciliation board then has a comprehensive picture of the whole thing rather than getting it mixed up as it would be had the conciliation officer not gone in.

With respect to the powers of the minister it has always been my contention that he who has the responsibility should have some authority. As I see the matter the good feature about this section is that while conciliation boards and labour boards may make decisions outside of the House of Commons, and we cannot question them or talk to them, yet if the minister is the final deciding factor, as he is under this machinery, we then can pull the minister up in the House and make him responsible to the House in any dispute that may be arising in any given industry. The House can get a picture from him through his conciliation officer that we would not otherwise get. I think myself this is legislation that is necessary in this day and age because this business of strikes and that kind of thing, in my opinion, belongs to the past. We are now in the administrative stage of unionism, and we have to set up some mechanics for it. This is new but I am for pinning responsibility on the man who has authority. I want that man to be as close to the House of Commons as we can get him. I have suggested as to pensions that in border-line cases the minister should be the deciding factor because we then can talk to him in the House. He should have some administrative latitude. With all due respect to the opinions expressed, my own experience in the rough and tumble of life in these matters is that when you get into a fight a man coming in from outside is a very important factor in resolving the difficulty.

Mr. SMITH: I have one suggestion I think the minister might consider. I am not presenting any amendment. I was wondering if in connection with this it should be "conciliation officer or officers." You would need to amend section 17 slightly. What I have in mind is one man may be persona non grata to the parties. They may say, "That fellow did so and so in Quebec city", or something of that kind. All I have in my mind is to give the minister permission to change the officer or make a new appointment of an individual because some of us are better conciliators than others. For example, I could conciliate Clarry Gillis but I would have an awful time conciliating Angus MacInnis. I am not saying he is tougher than Clarry Gillis because Jim Sinclair could conciliate Angus MacInnis where he would not get to first base with Clarry Gillis.

I am thinking of the human element in this picture because that is what it is. The man who conciliates has got to be the sort of fellow who will gain the confidence of both parties if he is going to get anywhere. It occurred to me you might want to broaden sections 16 and 17 to provide for the appointment of officers. I think if you added "or officers" or "alternate officers" it might strengthen your hand a little bit.

Hon. Mr. MITCHELL: I agree to that, officer or officers.

Mr. MACINNIS: I have one other word. First of all there are about six months in the year when the House is not in session and when you cannot get at the minister, and in my experience in the House—other people may not have had this experience—it is not very satisfactory when you can get at the minister. He can give you the brush-off just about as easy as anyone that I know, and that is generally what he does. I think perhaps the members of the committee have the idea this is before a strike may be called, but it is not. It is before a conciliation board is appointed, and the minister can, at his absolute discretion, postpone the conciliation board as long as he likes.

Mr. DICKEY: No, I do not think so. You have to look at section 27 with relation to section 21(*c*). Under section 21(*c*) either party may request the minister in writing to appoint a conciliation board, and can proceed after fifteen days have elapsed, the minister having received that notice. If one party at this stage does not want the matter carried on he can terminate it at the end of fifteen days.

Mr. Sinclair: I agree with Mr. MacInnis in one particular, that this could well be used as a means of stalling the conciliation process. I can quite see that if a situation occurred where a conciliator felt he was almost at the point of agreement it would certainly be desirable to give him extra time, but if he is at that point then I would say that both the employer and the employees' agents also realize that. Therefore I would suggest that if the phrase "with the consent of both parties" was put in here it would get around that because then neither party could say it was a stall to stretch out the conciliation. That would still give the minister the opportunity of putting a conciliation officer on the job for a longer time if he reports he is about to effect an agreement.

Hon. Mr. Mitchell: I can say that it has been in 1003 for four years, and I do not know of a single complaint, either on the floor of the House of Commons or to my knowledge from any organization of employers or employees. Let us forget I am the minister. Are you not going to place the minister of the time in a stupid position if you deny him the right, irrespective of the opinion of either party, to take, shall I say, another crack at it, he knowing all the facts through his conciliation officer, facts that are not known sometimes to either party to a dispute? If he thinks he can pull the dispute out of the fire without a conciliation board are you going to deny him the chance to do that? I do not know.

Mr. Lockhart: I am in agreement with the section with the exception that I also agree with Mr. Smith on the suggestion of making it plural instead of singular. I have had the experience in my own area where sometimes a conciliation officer has seemed to antagonize one side or the other, and where a new conciliation officer came in, and in one instance I have in mind two came in together. I think that the whole section is based on experience, but I do believe that Mr. Smith's suggestion of making it plural is a good one. That is the only thing.

Hon. Mr. Mitchell: If Mr. Smith will move that I will second it.

Mr. Smith: I am going to move it in this way. It may be an out-of-order amendment, but I am going to move that the bill be amended to permit plural or alternative conciliation officers to be appointed. I am not going to try to draft it.

Hon. Mr. Mitchell: In any section of the Act.

Mr. Smith: Yes, because if we go back to sections 16 and 17 that is the important place. They are the ones that provided for appointment. I hope you will not pin me down too closely to try to word it. The minister has experts to do that. I think the idea is very plain. I think it might be of value.

Mr. Lockhart: I would be very glad to second the principle of what Mr. Smith has suggested.

Mr. Gillis: There is one point I should like to make. Some people whom I have heard speak seem to think this is mandatory. It is not. Unless the parties to the dispute request in writing that a conciliation officer be sent in there will be none sent in.

Hon. Mr. Mitchell: No, no.

Mr. Gillis: Read section 16.

Mr. Sinclair: The minister does not have to have a request.

Mr. Gillis: Section 16 reads:

> Where a notice to commence collective bargaining has been given under this Act and (*a*) collective bargaining has not commenced within the time prescribed by this Act; or (*b*) collective bargaining has com-

> menced; and either party thereto requests the minister in writing to instruct a conciliation officer to confer with the parties thereto to assist them,

and so on.

Mr. SINCLAIR: Away down at the bottom, "or in any other case in which the opinion of the minister it is advisable so to do."

Mr. GILLIS: You have already adopted that.

Hon. Mr. MITCHELL: That provides for the point you are raising.

Mr. SINCLAIR: The minister has full discretion.

Mr. GILLIS: You have already adopted section 16. This is merely following through the mechanics. You have already adopted section 16. I am assuming those who administer the Act will be honest.

Mr. CROLL: Section 16 does not require request or consent.

Mr. GILLIS: Yes.

Mr. CROLL: No, read it.

Mr. GILLIS: I just read it—"and either party thereto requests the minister in writing"—

Mr. CROLL: "Or in any other case in which in the opinion of the minister it is advisable so to do."

Mr. GILLIS: You do not mean to tell me that the minister under the Act will set himself up as all supreme?

Mr. CROLL: Exactly.

Mr. GILLIS: You do not mean to say that without any contact, instructions or request from the parties to the dispute he is going to say, "I am going to do the job myself by a conciliation officer." I think that would be crazy. I do not think any minister would be foolish enough to take that attitude. I think in all this he is trying to gather evidence for his board before the board enters the picture.

Mr. SINCLAIR: I asked him a direct question on the section and he said yes, he would send a conciliator in where he saw a dispute brewing and where he thought that a conciliator could help.

Mr. GILLIS: It has been in 1003 for four years and it has worked very well.

Mr. MACINNIS: Surely the minister has the right to step in if either party to the dispute or both parties think they are a law unto themselves. We should grant that right to the minister without question. That is a part of his proper function, but to say that he can prolong that indefinitely is another matter altogether.

Mr. GILLIS: I do not think anyone says that. You just assume that.

Mr. CROLL: "Within such longer period as the minister may from time to time allow." That means anything, does it not?

Hon. Mr. MITCHELL: I have set up hundreds of boards, and I have never had any criticism on that ground.

Mr. CROLL: Is that in 1003?

Hon. Mr. MITCHELL: Yes.

The CHAIRMAN: Gentlemen, we have before us a motion by Mr. Smith which would amend not only section 27 but a few others in the bill. It is of a general nature and the effect of it is to add after the words "conciliation officer" wherever found in the bill the words "or conciliation officers."

Mr. SMITH: How would it be to let the section stand and have the minister's draftsmen work on it? He knows what we are talking about. They can bring it back in proper form and then I think it will go through without any further discussion.

The CHAIRMAN: I may say that we have already carried some sections where your amendment would apply.

Mr. SMITH: Section 16 is one.

The CHAIRMAN: If the committee would be agreeable to carrying section 27 subject to the application of your amendment that will be constructive.

Mr. SMITH: We can move reconsideration of section 16 and fix it up. I should like to see it properly drafted so that we will know what we are doing.

Hon. Mr. MITCHELL: And section 16.

Mr. CROLL: There may be others.

Hon. Mr. MITCHELL: Or any other section.

Mr. SMITH: Or any other section where the principle is involved.

The CHAIRMAN: I should like to have a vote on the principle of Mr. Smith's motion.

Shall the motion carry? Those in favour? Those opposed? The motion is carried.

Carried.

Shall section 27, subject to that motion, carry?

Carried.

Section 28, constitution of conciliation boards, subsection (1). Is the committee agreeable to considering these subsections separately?

Mr. CROLL: You had better read something which makes sense.

The CHAIRMAN: Section 28; I shall read the whole section.

Mr. CROLL: It seems all right.

The CHAIRMAN: Shall section 28 carry?

Carried.

Section 29; person ceasing to be a member; substituting appointment.

Carried.

Section 30; Oath of office. Shall this section carry?

Carried.

Section 31; Terms of reference. Shall this section carry?

Carried.

Section 32, procedure.

PROCEDURE

Function

32. (1) A Conciliation Board shall, immediately after appointment of the Chairman thereof, endeavour to bring about agreement between the parties in relation to the matters referred to it.

Procedure

(2) Except as otherwise provided in this Act, a Conciliation Board may determine its own procedure, but shall give full opportunity to all parties to present evidence and make representations.

Time and Place of Sittings

(3) The Chairman may, after consultation with the other members of the Board, fix the time and place of sittings of a Conciliation Board and shall notify the parties as to the time and place so fixed.

Quorum

(4) The Chairman and one other member of a Conciliation Board shall be a quorum, but, in the absence of a member, the other members shall not proceed unless the absent member has been given reasonable notice of the sitting.

Majority Decision

(5) The decision of a majority of the members present at a sitting of a Conciliation Board shall be the decision of the Conciliation Board, and in the event that the votes are equal the Chairman shall have a casting vote.

Particulars of Sittings to Minister

(6) The Chairman shall forward to the Minister a detailed certified statement of the sittings of the Board, and of the members and witnesses present at each sitting.

Majority Report

(7) The report of the majority of its members shall be the report of the Conciliation Board.

Representation Before Board

(8) In any proceedings before the Conciliation Board, no person except with the consent of the parties shall be entitled to be represented by a barrister, solicitor or advocate and, notwithstanding such consent, a Conciliation Board may refuse to allow a barrister, solicitor or advocate to represent a party in any such proceedings.

Mr. GILLIS: Carried.

Mr. CROLL: No, just a minute.

Mr. MERRITT: Well, Mr. Chairman, I object to clause 8.

Mr. KNOWLES: What is your profession?

Mr. MERRITT: Yes, I am a member of the profession. I know the argument which has been put forward for years and years but that really makes no difference here.

I have two basic objections to it. The first is that it is entirely ineffective in obtaining the objects which the labour organizations seek. The second is, of course, that it is in this great day of non-discrimination, a direct, gross and unwarranted discrimination against a recognized profession in Canada, and a recognized group of people in Canada. I know I am going to get the support of my friend from Vancouver North on my objection to this clause because my objection to it is exactly the same as his objection to the ban on margarine.

I do wish to say that, if you pass this subsection, you will be parties to a direct and entirely unwarranted discrimination. When you talk here of fundamental freedoms and human rights, that kind of thing, any person who votes for this section, will reveal his opinion on fundamental rights and freedoms.

Let us put that aside, because that is a matter of principle and I know the feeling on this matter. Let us get down to practical things. I think Mr. Bengough's evidence last year was that the intention of the organizations was that negotiations before conciliation boards should be carried on by principals, that is what they intended. They did not want paid and skilful men. They wanted the principals to try and get together and settle the dispute. If you say that, that the negotiations must take place between the manager of the plant and the president of the local union, okay. If you say that the negotiations must take place between some more senior officer of the international union and some more senior officer on behalf of the employer, okay. Then, you have achieved some purpose but all you are doing here is to make it impossible for barristers, solicitors or advocates to be the pleader for either side.

Mr. JOHNSTON: It is not impossible, because it can be done with consent.

Mr. MERRITT: Yes, I mean without consent of both sides.

Now, you do not prohibit a disbarred barrister from pleading on behalf of management or the union. Somebody who has been found guilty by his brothers of professional misconduct, who takes his skill as a pleader into this line of work, is perfectly eligible to appear without the consent of either party.

Then, of course, anyone can go to law school and get the same knowledge of law as any young lawyer has. He can then specialize in labour relations without paying fees to the Law society of his province. He could be much more technical in labour relations than any practicing lawyer could be. He might know all the ways of wriggling and avoiding an agreement and yet, simply because he does not pay his annual fee to the law society, you cannot prevent him from appearing before the board.

It is well known now that there are, in many parts of Canada, organizations set up for the express purpose of representing either management or labour in an industrial dispute. There is nothing in that section to stop these people from representing either side without consent of the parties. These people, and I say this with deference, have not got the long tradition of the bar. They have not got the responsibility towards the law society which every lawyer has. They are less qualified than lawyers to do a good job in this kind of procedure.

I shall not say any more, except to reiterate that if you want this section to say that only principals can appear before the conciliation boards, that is an entirely different thing.

(At this point Mr. Croll assumed the chair.)

You could say that no one who is not a member of the management staff or an employee of the company can appear before the board. I have no objection to that. However, if you simply single out a learned and very respectable and responsible profession in Canada for exclusion, without any reason except sheer prejudice, and if you do not succeed in ousting the other special pleaders, you have not achieved anything of any value at all. You are practising a rank discrimination which this parliament should not countenance for one moment.

The Acting Chairman: Then, I understand you are moving to strike out clause 8 of section 32?

Mr. Merritt: Yes.

(At this point, Mr. Coté resumed the chair.)

Mr. Smith: I will second that motion. I want to say a word about it. In certain places, there is a prejudice against the union to which I belong. Just why that should be, I do not know.

Now, let us look at the other side of the picture. I can quite see how this arose. It arose in connection with workmen's compensation at a time when the trade unions were not as well organized as they are today. When workmen's compensation matters came before the courts, the employers were able to employ a good lawyer. May I say that I have been on the other side. The union has been unable to meet that chap in the controversy which was before the court at that time. I think there was something in the position taken at that time because, you see, the union did not support its individuals as it does now. It did not do so because it was, perhaps, financially incapable of doing it. Those days have gone. When we hear of a fine being levied on a union in the millions of dollars and being paid by return mail, it gives us an idea of the change which has taken place.

I want to say this, that labour has developed and properly developed, the best set of professional advocates of which I know.

Mr. Dechene: Some of them are in this room.

Mr. Smith: In this room—well now, we had the minister of labour blushing a moment ago and I do not want Angus and Clary to follow his performance.

Let us come down to cases. The lawyer who appears before a board is an advocate paid, it is true, to do what? To do the best he can for his side. On the other hand, I put this simple proposition to you; you could hunt the bar of the

Dominion of Canada from end to end and, in matters of this kind, you will not find an advocate, in my judgment, even comparable with Pat Conroy or Charlie Millard among the men in this section of the country. Going out to the section of the country in which I live, many of the employees used to employ me, for what reason I do not know because their Angus Morrison, in my judgment, is one of the best advocates I have ever met. He got a raise of $2 out there during the war. I was there as counsel, too, but I was really Angus Morrison's junior. So, I really know what I am talking about when it comes to that.

How would any of you like it if we put a section into this labour code which said that, in labour matters, Pat Conroy could not appear for the labour union or Charlie Millard or any of these chaps with experience. The fact that a man has a degree, signed by somebody, only means this; that he has gone to school and has been equipped for what? To learn something about the law of business; that is all it means. As any lawyer knows toway, he gains more from experience, as we all do, than from all the books which could possibly be written. If you follow the book, then some small point arises unexpectedly and off you go at a tangent.

The modern practice of law is this: we have so many commissions, so many inquiries and so on, a good lawyer today is one who can quickly accommodate himself to the business which is before the tribunal at that time. I remember on consecutive days jumping from a coal inquiry to a milk inquiry and, the next day, I was acting for someone who, it was alleged, was guilty of the gentle and beautiful art of seduction. That is what a lawyer does.

For a moment, I should like to take you back to the first meeting of this committee in the railway committee room. We heard the officers of the three steel companies. Now, who put up the case? It was put up by Millard and Conroy. Those other fellows were hopelessly lost. I am not making a plea for them on the ground that they could not hire somebody to do it. In fact, the one from Toronto, that fellow who wore this black vest when it was about 102 in the shade—I do not know how he did not roast himself to death.

I am not making so much a plea for my own profession as I am saying to you that if you start discrimination, and this is nothing less than discrimination, the minute you start that, I do not know where, in this supposedly democratic country, you are going to end.

I am going to give you a little history. For a long time, the unions disliked courts and have had, of course, an instinctive dislike of lawyers. Perhaps that is inbred or something of that kind. I think there was justification for it many years ago. I may say this to you, Mr. Chairman, a labour code can be decided upon, but I do not think the legal profession will go broke if unable to appear before the War Labour Board. You will always find this; the more high-priced the lawyer industry employs, the greater the opposition you have from the other side because they will say, "Well, that is the big shot; I am going to take a round out of him." That is true in our courts and it is true in our boards.

I hate the word "pleading" but I am pleading with this committee not so much to do something for my profession—I see I am getting a smile from Clary Gillis. I noticed that during the inquiry of the coal commission in Nova Scotia a year ago, that one which lasted so long, laboured so hard and brought forth a mouse—I am going to say this, they were quite capable of sending to Toronto and getting a man down there, a really high-priced fellow who is now not in circulation, but that fact has nothing to do with the coal inquiry down in Halifax.

I do want this committee to pass—not on our account, we will get along—but I do ask the committee to pass this motion. In Alberta, the wheel has made a full turn. There we have a board to deal with workmen's compensation. The greatest opposition to that board is coming from labour. We have a clause which is found, I think, in most provincial acts that the decision shall, in the event of doubt, favour the man. It is something similar to that which you have in your Compensation Act. I am not saying that the United Mine Workers of America, District 18, want an appeal from the compensation board but I will say this, that the only opinions that are being expressed for that appeal are being expressed by members of that organization. So, you see, the wheel has made almost a complete turn.

Please do not misunderstand me. I am not saying that the majority of the miners in district 18 want that appeal, but I do say that many of them are complaining, certainly those individuals who were dealt with, are complaining because they have not an appeal to rectify what has been done by the compensation board.

Now, I should like someone in this committee who can divest himself of prejudice—I am quite sure Mr. Gillis can do that. I see he is taking the odd note and I flatter myself it is of what I say. Perhaps he is just registering the twelve o'clock whistle. I do put it to you in this way, not so much on our account but in its broader aspects, to say that the profession learned, not so much by study as by experience, to assess facts should not be barred from a logical place in which it might appear.

I close with this remark. You may have read in the paper the other day of a man by the name of John L. Lewis who walked into a similar board in the United States with eight lawyers with him.

Mr. Croll: Look what happened to him.

Mr. Smith: The only thing I can say with respect to that is this; he had the wrong agents. If he had taken you or I down there, I am quite sure the result would have been quite different. However, the old reason is gone today. I hate the repetition of the word "democracy", we hear it in the House of Commons at least fifty-five times a day. We are all talking about different things when we use the word "democracy", but I do suggest that the imposition of a prohibition on a profession whose business it is to assist and present facts should not be condoned by this committee.

The Chairman: Gentlemen, before I let the discussion proceed any further I have to acquaint you with a brief that I have received from the Law Society of Upper Canada on this same matter.

Mr. Croll: Mr. Smith covered it better than they did.

The Chairman: I have to report to you I have this brief in my hand. Would you like me to read it or have it placed on the record as is?

Mr. Croll: I think Mr. Merritt and Mr. Smith have both covered the subject and have covered it much better than the brief covers it.

The Chairman: I agree with you, but I have been requested by Mr. Lee Kelley, who has signed this brief, to place it before the committee, and I am discharging my duty by doing so.

Mr. Johnston: Give us a summary.

Mr. Case: Can you tell us what position they take?

Mr. MacInnis: There is a point in what the chairman says, that if these people have prepared a brief on this question, either on one side or the other—I am not sure which side—I do not think we should deal with the question without hearing their brief.

Mr. Croll: All right.

The Chairman: It is not a very long brief, just a page and a half.

Mr. MacInnis: I move that the chairman read it.

The CHAIRMAN:

April 30, 1948.

P. E. COTE, Esq., M.P.,
Chairman of the Select Committee on
Industrial Relations,
Room 411, House of Commons,
Ottawa, Ontario.

Re: Law Society of Upper Canada Bill 195

Dear Mr. COTE.—The Law Society of Upper Canada appreciate the invitation of your Committee to file a brief with you respecting Section 32(8) of Bill 195. As counsel for the Society, I respectfully make the following submissions:

(1) The Society is strongly opposed to any restriction of the traditional right of the legal profession to practise before any judicial or quasi-judicial tribunal.

(2) It feels that it is contrary to the public interest that parties appearing before a Conciliation Board should not have the right to be adequately represented by competent legal advisers. Since 1944, particularly, lawyers have been appearing before labour tribunals and the experience and knowledge gained would be of great value to the parties and the skillful and logical presentation of evidence would be of considerable assistance to the Conciliation Boards.

(3) Under the Bill as presently framed, a disbarred lawyer with knowledge of labour matters, or an agent of unsavoury reputation and doubtful ability, could appear before a Conciliation Board, but a lawyer in good standing and of recognized ability could be refused a hearing.

(4) The latter part of Section 32(2) of the Bill states that a Conciliation Board, "shall give full opportunity to all parties to present evidence and make representations." Accordingly, it is imperative that the Board give the full opportunity to parties to present evidence and make representations, yet the very persons best qualified to present evidence and make representations may be barred from doing so. It is submitted that Section 32(8) defeats the intent of Section 32 (2).

(5) Canadian lawyers have always enjoyed an enviable reputation and every effort is made to justify and maintain this reputation, so the Bar Society of Upper Canada quite naturally resents the reflection cast upon lawyers through the inclusion of clause 32(8) and considers the clause discriminatory.

When I appeared before the committee last year and set forth the views of the Law Society of Upper Canada, Mr. Croll asked all those present whether they had any questions to put to me or if they required any further information from me. Though a number of labour unions and other organizations were represented before the committee that day, neither any member of the committee, nor any representative of labour or of the other organizations took objection to my submissions, nor did they question me or ask for further information and it appeared to me that they acquiesced in my submissions.

Yours very truly,

LEE A. KELLEY.

I want to point out that there is a reference to the same subsection 8 in a submission by the Ontario committee on Industrial Relations and Labour Law of the Canadian Bar Association, which we have here. It is the same plea put forward by Mr. Kelley.

Mr. MacInnis: I want to reply very briefly to some of the comments made by Mr. Merritt and Mr. Smith. Mr. Smith said, "If you bring this in now where is it going to end?" We are not bringing this in now. It has been in the Act since 1907 which brings me to the other point made by Mr. Smith as to how it happened to come in. It arose out of lawyers being used against workers who were making claims for compensation before compensation boards. The 1907 legislation is prior to any of our compensation legislation in Canada and that has no bearing on the matter. I should like to point out that at a conciliation board hearing a dispute between an employer and his employees is not a legal matter. There are really no legal matters enter into it all. Obviously the idea is to keep legal quibbling out of it. Mr. Merritt in demonstrating the effectiveness of labour men or labour representatives in putting their case used this phrase, and I took it down when he said it, "A greater ability in wriggling and preventing an agreement." You will find those words in the evidence when it is printed.

Mr. Merritt: Special pleaders.

Mr. MacInnis: The term used was "wriggling and preventing an agreement." That is just what we want to prevent in a conciliation board. It is not trying to prevent an agreement; it is trying to reach an agreement, and as a lawyer must take one side or the other he comes as a special pleader for the particular side he is on, and he sees nothing else. He brings up all sorts of technical points, legal points, in order to confuse the situation. If I were in a difficult position and was engaging a lawyer that is the kind of lawyer I would want.

Mr. Lockhart: Would you permit a question? May I ask Mr. MacInnis to explain the position of special pleaders on the other side, just what their position is?

Mr. MacInnis: They are representing their particular organization. Surely the employer with all the advantages that he has got and with the opportunities he has had, and the knowledge he has of his own business, is just as able to represent his business. That is what he is representing just as the trade union is representing their business.

This section has been in the industrial legislation since 1907 and it has worked well. I have never heard that any particular damage has been done to employers because they could not be represented by lawyers in these cases.

Then the argument was made that a disbarred lawyer could be a representative, but a disbarred lawyer is not a lawyer any longer. As I understand it he was not a lawyer until he was called to the bar, and when he has been disbarred he is no longer a lawyer. Consequently he does not come under this.

Hon. Mr. Mitchell: He might be ten times worse than a lawyer.

Mr. MacInnis: I imagine it is because he was a bad lawyer that he was disbarred. Anyone who wants to use the services of a bad lawyer has three strikes on him before he begins. There is nothing in that argument. I would suggest that this section having been in the old Industrial Disputes Act, and having caused no inconvenience or loss as far as I know to anybody, should be allowed to remain.

Mr. Gillis: I have a few words. Are you going to talk?

Mr. Croll: It will depend on what you say.

Mr. Gillis: First of all there is no discrimination in the clause because the wording definitely says that if both parties agree to call in a lawyer or two lawyers the Act permits it.

Mr. Johnston: But the conciliation board can then refuse to have lawyers appear.

Mr. Gillis:

> In any proceedings before the conciliation board no person except with the consent of the parties shall be entitled to be represented by a barrister, solicitor or advocate and, notwithstanding such consent, a conciliation board may refuse to allow a barrister, solicitor or advocate to represent a party in any such proceedings.

I do not see any discrimination there. I do not think any board would take the attitude, if both parties agreed they should be represented by a couple of lawyers, that they would not allow the parties to be so represented.

Mr. Dickey: They are empowered under the Act not to.

Mr. Gillis: They are, but I do not think that power would be used if both parties wanted it. I cannot see any discrimination. I just want to say this. As Mr. Smith has pointed out the labour movement has grown up. There was a time in this country when the movement was pretty immature. The officers were new and it was a pretty loose organization and it was necessary to bring in trained personnel such as lawyers, but during the past ten years particularly a large section of the movement in this country has a well developed national set-up with men like Conroy and Bengough and those people. Most unions have research directors, men who are dealing in facts with regard to the industry all the time. The companies have the same thing. They have experts in every department. Those are the men who actually know what the agreement is all about. If there is any chance of coming to an understanding those are the men who can best arrange it.

It has been the practice in some of the larger corporations in the past, where the union was merely using its own personnel, to bring in a high-priced lawyer who would enter on a legal wrangle for weeks and weeks at a time and which really prevented an agreement. The unions were not represented by a solicitor. As Mr. MacInnis pointed out, and this is something we have to remember, in labour relations you are dealing with economic matters. You are not dealing with legal matters at all. You must know the economics of the industry you are negotiating for.

He mentioned a moment ago that a certain high-priced lawyer was taken down on that coal inquiry. My personal opinion is he never should have been taken down there. I listened to it considerably, and all that fellow did was to put on a show. He had not the slightest conception of the industry he was trying to talk about. The men themselves were in a much better position to make a presentation. Who is in the best position? A union does not enter into negotiations or go before a conciliation board without having their case prepared and their facts assembled. Why is it necessary to bring in a lawyer to interpret something that they wrote themselves?

On the other hand, with the battery of experts that the industry has why is it necessary for them to bring in legal counsel? I think it delays it, ties it up, creates a fight, and as Mr. MacInnis has pointed out there is a lawyer on this side and a lawyer on that side, and whether you are innocent or guilty he is going to convict you or acquit you if he can. It is a straight personal matter between two very strong personalities, and the parties to the dispute merely appear as witnesses. They listen and many times they wonder what it is all about when they hear the arguments advanced from side to side.

When Mr. Merritt talks about special pleaders it is a misnomer. There is no such thing. Charlie Millard negotiates for the steel workers union, and any section of the steel workers union can call in Millard in any dispute. Pat Conroy is the head of the Canadian Congress of Labour and he is a member of that union.

Mr. Merritt: Management should have special pleaders then.

Mr. Gillis: Management has experts in every department. We heard that before the Industrial Relations Committee the last time. Mr. Hilton is in a position to call in an expert from any section of that industry to deal with that particular section in wage negotiations, and they do it. There is no such thing as special pleaders. There is no objection to the industry using any one in the industry before a conciliation board. All the union is asking is that management and unions be permitted to use their own personnel to work out an agreement with the board selected by themselves and with the chairman appointed by the government. It is to avoid delay and legal tangles that we have this section written in. The Congress brief has the same thing in it. There is really no necessity for lawyers with the union movement developed as it is today, with the trained personnel they have to present their cases to boards, and so forth.

On the other hand, in the final analysis a dispute under this Act may go to court. Pat Conroy of the Canadian Congress of Labour is not permitted to go into court and to plead before that court. That is reserved for the lawyers. They have a closed shop there.

Mr. Smith: He can be subpoenaed as a witness.

Mr. Gillis: He can be subpoenaed as a witness.

Mr. Smith: He can tell the same story.

Mr. Gillis: No, he cannot. He can be subpoenaed as a witness; he can be taken in there and psychoanalyzed by a battery of lawyers and the legal personnel sum the matter up and decide whether or not he is sane. If the legal profession are prepared to say that in the administration of this Act they are prepared to allow special pleaders, as Mr. Merritt terms them, from the unions to have the same rights before the courts of the country in the administration of the Act as lawyers would have before conciliation boards then that is fair, but what the lawyers are asking for is a closed shop in the courts where the matter is finally decided but an open shop in a field that belongs to management and labour themselves. That is about the position as I see it.

I think we have entered the stage where management should be given to understand that they have grown up and that labour relations are human relations. They themselves are the best people to deal with their employees. Labour should be made to understand that they have got to train personnel. They have got to use trained personnel in working out their agreement and following the procedure that we are trying to lay down under a national labour code. It makes both sides more responsible. This business of laying back and depending on somebody else to work out your problems does not work. I think the present practice is absolutely fair. I think it is in keeping with the times and unless, as I said before, Mr. Smith's union is prepared to open its doors and allow free access to the courts for the special pleaders from the union movement they have no right to say that they should be given an open shop under this particular legislation that belongs to unions.

Mr. Lockhart: I wonder if the minister would enlarge on the reason for this section.

Mr. Smith: Before he does so may I say a word? This is hot off the griddle and I do not want it to disappear while the minister comes in with his usual conciliatory attitude. As this section is drawn Pat Conroy cannot appear before this board because it bars barristers, solicitors and advocates. In the province of Quebec or in some other provinces it may be that the word "advocate" has some special meaning.

Mr. Croll: You are wrong on that because they do appear before these boards. I can give you an example when Aylesworth—

Mr. Smith: I know they do. I am not misunderstanding you at all, but what I am saying is that if we pass this section then no one can appear as an advocate. An advocate means someone advocating a position.

Mr. Knowles: Was that the wording in the former legislation?

Hon. Mr. Mitchell: Since 1907.

Mr. Gillis: Conroy is not an advocate. He is a part of the union set-up.

Mr. Smith: Conroy is an advocate. He is a member of the United Mine Workers of America, and the minute he goes outside of that he is an advocate for someone else, absolutely.

Mr. Gillis: In addition to being a member of the United Mine Workers of America Pat Conroy is Secretary-Treasurer of the Canadian Congress of Labour. That body co-ordinates 200,000 workers in this country. He is the official head of it, and in any section where there is a dispute and Pat Conroy's assistance is needed Conroy can be taken in as a part of the union set-up. He is not in there as a special advocate. He is merely there as a member of one of the parties to the dispute.

Mr. Smith: Let us compare our union with yours. John Hackett gave the lawyers of the House of Commons and the Senate an excellent dinner the other evening as president of the Canadian Bar Association, but he cannot practice in the province of Alberta because he is not a member of that union of ours out there. He is in exactly the same spot as Conroy. He can act as an advocate before the board but then, of course, he is an advocate and the word "advocate", if you want what you want, should be taken out of this thing altogether. Then I come to another point. Let us assume that we have a lawyer who has joined a corporation, as many of them have. Corporations appreciate brains and take them where they can find them. This lawyer has now become president of the corporation. He is absolutely barred under this section.

Mr. Gillis: No.

Mr. Smith: Yes he is, clearly.

Mr. Gillis: As president of the corporation he would be there in that official capacity.

Mr. Smith: Let me read it

> In any proceedings before the conciliation board, no person except with the consent of the parties shall be entitled to be represented by a barrister, solicitor or advocate.

Mr. Gillis: As such.

Mr. Smith: It does not say so, and even if it did say "as such" I do not think that would affect it. This section simply says that if a man thirty years ago passed the bar examination and signed on the dotted line and took the necessary oath and then became president of the largest electrical company, we will say, in the Dominion of Canada, he cannot appear before this board under this section.

Mr. Case: Murdoch, the head of Noranda, could not appear.

Mr. Smith: He could not, because you have barred him as such, if instead of barrister you had said "ordained preacher" lots of people could not appear. When you come to advocate there is one who sits beside me here. In my short term in the House of Commons I do not know where you would go to find a better advocate when it comes to your rules. If you wanted a better lawyer on that subject I do not know where you would go to find him. I refer to my friend, Mr. Knowles.

We have heard a lot about quibbling, and so on. What does that mean? I am sorry that Mr. Gillis had the unfortunate experience which he did, but here we have drawn an Act from which we have endeavoured to take all those things over which persons might quibble, so that we can say with regard to any one who would appear before this board that his job is to assemble his facts as best he can and put them before the board. I can visualize, if you want to continue your discrimination, that no person having achieved a certain position in a union should be allowed to appear before this board. It is equally as fair as what you are doing now.

Mr. Gillis has been referring altogether to wealthy corporations which are departmentalized with heads here and there. They are not the only people who have disputes because in the place from which I come we do not have these big industries at all. I met a man the other day who started a machine shop in Calgary some years ago. It is the Precision Machine Shop. He was down here trying to do something about his income tax, and he brought a chartered accountant with him. He is very wise. I know very few lawyers who know anything about it. I know a chartered accountant makes out mine and I sign it on the dotted line. What is his position? These are the kind of disputes we have. We are not all big steel companies or packing plants, and so on, as you have in the industrialized east. Ours are small concerns. We have many men operating them who came up from the benches. This chap who has this shop is one. He would be hopeless in trying to present his position before a labour board without the assistance of someone, whether he be a lawyer or whether he not be a lawyer, who was accustomed to assembling and presenting facts.

Mr. GILLIS: He can get that assistance.

Mr. CROLL: How?

Mr. GILLIS: By hiring a lawyer to draft a brief which he will read in court

Mr. CROLL: Then he gets it from a lawyer without letting the lawyer go to court.

Mr. SMITH: Mr. Gillis, you are certainly going contrary to many things I have heard you say.

Mr. GILLIS: You just said he could not get any assistance.

Mr. SMITH: In the House of Commons how would you like to be muzzled with a brief prepared by someone else? That is what you are asking my friend with his little machine shop to do.

Mr. GILLIS: Anybody running a machine shop is not muzzled.

Mr. SMITH: No, he has got an emery wheel to sharpen his wits, but that is all he has got, if you want to come down to the things he has got in presenting his position before the board. Now, pass this thing if you want to. I have pointed out two things to the minister that I think should be fixed. The first one is that because a man was a barrister thirty years ago he cannot present his position now when he is president of a corporation, and secondly I refer to the word "advocate". If you want it there, and if we want to be smart I would leave it there and advise some corporation, in the event that any of these people would hire me, to bar Pat Conroy coming in because he is an advocate in that position. He is nothing else. I think that this section should be dropped. It certainly should stand for revision in view of the various defects I have pointed out.

With respect to the brief filed by the Law Society of Upper Canada I am grateful to the chairman for reading it. I think I might have had a copy but I did not read it, but as you were kind enough to say it did not present much more than Mr. Merritt and I have done. I appeal to you in this last moment. What harm is it going to do to anybody, and that being so why restrict a group of our people, a union if you like, from a field which is their natural habitat?

Mr. CROLL: Question.

Mr. Johnston: I might say a word. I am not a lawyer, and I do not intend to take part in the debate to any great extent, but it seems to me that if section 8 were changed just a little bit it might meet with the approval of all parties concerned. The first part of it reads:

> In any proceedings before the conciliation board, no person except with the consent of the parties shall be entitled to be represented by a barrister, solicitor or advocate—

and so on. It seems to me if the section were to stop there it would mean that if the parties to the dispute themselves were agreeable to be represented by legal advisors they could be. I do not see why the conciliation board should be allowed to come in and refuse the request of both parties concerned. I just cannot follow the logic of the last part of the section. If the two parties are agreeable to having their case presented by legal counsel then I think that should end it. I do not think the board should over-rule the desire of the parties themselves. I cannot see much sense in that unless it is, as some of the lawyers have put it here, to deliberately bar the profession. I can see a great deal of advantage and I can see a great deal of disadvantage in having legal counsel at these hearings but, on the other hand, if both parties desire to be represented by counsel then I cannot see any objection. If both parties or either one of the parties should object to it, then it is not permitted. However, I cannot see the logic of having the conciliation board come in and refuse a request made by both parties. Perhaps the minister can explain that. Perhaps he would also be in favour of dropping that last part of the section.

Mr. Timmins: I should like to say a word—

The Chairman: I have to remind you, gentlemen, it is twelve-thirty. Before we adjourn—

Hon. Mr. Mitchell: Could we finish this section?

Mr. Smith: I do not think so. To meet this objection concerning quibbling, why could you not give the board the power to refuse to hear a lawyer if he is quibbling?

Hon. Mr. Mitchell: In the first place, the section was put in there at the suggestion of the two main labour organizations, the C.C.L. and the Trades and Labour Congress of Canada. It is almost identical with a section which has been in the Industrial Disputes Investigation Act since 1907. I cannot go back that far, but the workmen's organizations felt themselves stronger with this powerful defense in front of them.

I think it is a fair thing to say that, since 1907, there has been a tremendous development in the power of trade union organizations. I was talking about my own little organization a while ago. They just had their convention in Chicago and an organization of less than 150,000 members finds itself with $9,000,000 in the treasury; that is not hay.

Mr. Smith: Do not let Judge Goldsborough hear about that.

Hon. Mr. Mitchell: When it comes to salaries, we are pikers in this country; but that is beside the point. I think there is a vital principle at stake here and that is the right of a man to join a trade union and take part in the functions of that organization. Supposing a lawyer wants to join a trade union, he is barred from representing that union.

Mr. Gillis: Not if he goes and gets a job.

Mr. Smith: Take Mr. Maybank, if you will.

Hon. Mr. Mitchell: When it comes to salaries, we are pikers in this All a lawyer has to do is join a trade union and he can appear. I have advocated this for years, that firms in this country build up personnel departments specializing in what I often described as engineering in human beings. It is much more difficult than engineering in material things. Now, a lawyer is barred from taking a position of that description under this section. My own view is that I am not going to press this section too hard. It goes against the grain to say to a fellow, you cannot work at this; that is the position I take.

Mr. CROLL: Let us vote on it.

Mr. TIMMINS: If you are going to have a vote, let us all have a chance to speak.

The CHAIRMAN: Before we adjourn, would you be agreeable to sitting tomorrow morning, following the suggestion made at the beginning of this meeting?

Mr. CROLL: I am opposed to it. I want to vote on this section and I cannot be here.

Hon. Mr. MITCHELL: I shall repeat what I suggested at the opening of this meeting. Some of the members wish to get away, including myself. I thought perhaps we could meet more often and clean this bill up next week in this committee.

Mr. SMITH: May I make a suggestion, that we leave the hurry-up part till next week? I think we have made splendid progress in this committee. There is very little contentious matter left in the bill. I think we can well adjourn until next Tuesday and then if we want to hurry let us put the pressure on at that meeting. I do not think we should meet tomorrow.

The CHAIRMAN: We stand adjourned until next Tuesday.

The committee adjourned to meet again on Tuesday, May 11, 1948.

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Canada. Industrial Relations, Standing
" Committee on

SESSION 1947-48

HOUSE OF COMMONS

STANDING COMMITTEE
ON
INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE - a report

No. 5

Bill No. 195—The Industrial Relations and Disputes Investigation Act

TUESDAY, MAY 11, 1948

WITNESSES:

Mr. A. MacNamara, Deputy Minister, Department of Labour, Ottawa;

Mr. A. H. Brown, Chief Executive Officer and Solicitor, Department of Labour, Ottawa.

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EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
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CONTROLLER OF STATIONERY
1948

MINUTES OF PROCEEDINGS

TUESDAY, 11th May, 1948.

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. The Chairman, Mr. P. E. Cote, presided.

Members present: Messrs. Adamson, Archibald, Black (*Cumberland*), Bourget, Case, Charlton, Cote (*Verdun*), Croll, Dechene, Dickey, Gibson (*Comox-Alberni*), Gillis, Gingues, Johnston, Knowles, Lapalme, Lockhart, MacInnis, McIvor, Merritt, Mitchell, Pouliot, Ross (*Hamilton East*), Sinclair (*Vancouver North*), Smith (*Calgary West*), Timmins, Viau.

In attendance: Mr. A. MacNamara, Deputy Minister, Mr. A. H. Brown, Chief Executive Officer and Solicitor, and Mr. M. M. MacLean, Department of Labour, Ottawa.

The Chairman presented the Second Report of the Steering Committee, viz.:—

Your Steering Committee met Friday, 7th May.

1. Written representations from the following were reviewed:—

(*a*) Brief, dated 3rd May, 1948,—the Canadian Congress of Labour;
(*b*) Brief, dated April, 1948,—the Canadian Manufacturers' Association;
(*c*) Report, dated January, 1948, of the Committee on Industrial Relations and Labour Law, B.C. Section, The Canadian Bar Association;
(*d*) Report, undated, by the Nova Scotia Committee on Industrial Relations, the Canadian Bar Association;
(*e*) Submission on Bill No. 338, undated, the Ontario Committee on Industrial Relations and Labour Law, the Canadian Bar Association;
(*f*) Brief, dated 1st May, 1948, Shipowners Association (Deep Sea) of British Columbia;
(*g*) Submission with respect to Bill No. 195, May, 1948, The International Nickel Company of Canada;
(*h*) Memorandum, dated 17th April, on Bill 195, Ontario Mining Association.

2. Items (*a*) and (*b*) were distributed to members on the 2nd May. Copies of other items are being prepared and will be circulated within a few days. Therefore, your Committee considers that no purpose will be served by the printing of any of these items.

3. Your Committee recommends that a letter, dated 24th April,—The Railway Association of Canada, be read into the record. This procedure is in line with the reading of letters from other central organizations that were requested to submit written representations.

4. Your Committee also reviewed the following:—

(*a*) Resolution, dated 7th April, Chamber of Commerce, Victoria B.C., endorsing brief submitted by the Executive Committee, Canadian Chamber of Commerce;

(*b*) Resolution, undated, Local 779, Textile Workers Union of America, Cornwall, Ont., in support of the Labour Code proposed by the Canadian Congress of Labour;

(*c*) Telegram, 3rd May, Deep Sea Steamship's Operators of Canadian Flag Vessels, East Coast, endorsing brief submitted by the B.C. Shipowners Association;

(*d*) Telegram, dated 5th May, Saskatchewan Employers Association, endorsing brief submitted by the Canadian Chamber of Commerce.

5. *Representations from Engineers*—After having considered many representations from engineering associations, and from individuals, your Committee is of the opinion that the great majority of engineers endorse clause 2 (*i*) (ii) of the Bill as drafted. This is borne out by representations received from the eight different provincial associations and the Engineering Institute of Canada.

On the other hand, the Federation of Employee-Professional Engineers and Assistants have submitted a brief advocating the inclusion of engineers and have referred particularly to existing collective agreements involving engineers as such.

A memorandum summarizing representations received on this question, and giving particulars of membership in each association concerned, is attached for the information of members.

(For text of memorandum, see Minutes of Evidence).

A suggestion by the Chairman to defer consideration of the said report to the next meeting was concurred in.

The Chairman read a letter dated 24th April from The Railway Association of Canada.

Copies of the following were distributed to members:—

(i) Submission with respect to Bill No. 195, May, 1948, The International Nickel Company of Canada.

(ii) Brief, dated 6th May, 1948, The Board of Trade of the city of Toronto.

The following were filed by the Chairman:

(i) Submission, dated 4th May, 1948, The Canadian Council, the Institute of Radio Engineers.

(ii) Letter dated 7th May, Northern Electric Engineering Employees Association, Montreal.

(iii) Telegram, dated 7th May, The Chamber of Commerce, Regina.

The Committee considered the advisability of holding evening and/or Wednesday morning sittings.

Mr. Johnston moved, that the Committee meet on Tuesday and Thursday mornings only.

Mr. Sinclair moved in amendment that the Committee meet also on Tuesday and Thursday evenings.

Debate followed and consideration of said motion and amendment was deferred.

The Committee resumed consideration of Bill No. 195.

Clause 32.

The question being put on the motion of Mr. Merritt, made at the last meeting, that subclause (8) be deleted, it was, on division, resolved in the affirmative.

Clause, as amended, carried.

Clause 33

Carried.

Clause 34

Carried.

Clause 35

Carried.

Clause 36

Carried.

Clause 37

Carried.

Clause 38

Carried.

Clause 39

Referred to the Steering Committee to consider a proposed amendment by Mr. Gillis relative to enforcement provisions.

Clause 40

In the absence of the Minister of Labour, Honourable H. Mitchell, Mr. MacNamara was called and questioned. He was assisted by Mr. A. H. Brown.

On motion of Mr. Croll,

Resolved,—That the word "one" be substituted for the word "two" in (*a*) and the words "one thousand" for "five hundred" in (*b*) thereof.

Clause, as amended, carried.

Clause 41

Carried.

Clause 42

Carried.

Clause 43

Carried.

Clause 44

Carried, subject to the application of the principle of the proposed amendment by Mr. Gillis to Clause 39.

Clause 45

Carried.

Clause 46

Carried.

Clause 47

Carried.

Clause 48

On motion of Mr. Smith,

Resolved,—That the word "registered" be inserted before the word "mails" in line 3 thereof and that the clause be redrafted accordingly.

Carried, subject to the above amendment.

Clause 49

Carried.

Clause 50

Carried.

Clause 51

Carried.

Clause 52

Carried.

Clause 53

Stood over for review by the Department of Labour.

Clause 54

Stood over.

Clause 55

Stand.

Clause 56

On motion of Mr. Croll, consideration was adjourned.

The Committee adjourned at 12.30 o'clock p.m., to meet again Thursday, 13th May, at 10.30 o'clock a.m.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

House of Commons,
May 11, 1948.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Chairman, Mr. Paul E. Cote, presided.

The Chairman: Order, please.

I wish to report first, gentlemen, that your steering committee met last Friday with the view to looking into the material which the committee has received in the way of correspondence and submissions. Most of the material came from the professional engineers advocating either the inclusion or the exclusion of their profession from the definition of the word "employee" in Section II-1-2. For the information of the committee I have had prepared as an appendix to the report of the steering committee a statement giving an outline of the engineering associations which have made representations as to what their constitutions are, their membership in each of the provinces, etc. To save time, as this is a six page report, I would suggest that we place the report on the record and postpone consideration of it until our next meeting. There is nothing particularly urgent in the report, so we can take it up at the beginning of the next meeting and in the meantime the members could have an opportunity of studying its contents. What is your pleasure, gentlemen?

Some Hon. Members: Carried.

COMMITTEE ON INDUSTRIAL RELATIONS 1948

Second Report

Your steering committee met Friday, 7th May.

1. Written representations from the following were reviewed:
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   - (*c*) Report, dated January, 1948, of the Committee on Industrial Relations and Labour Law, B.C. Section, The Canadian Bar Association.
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On the other hand, the Federation of Employee-Professional Engineers and Assistants have submitted a brief advocating the inclusion of engineers and have referred particularly to existing collective agreements involving engineers as such.

A memorandum summarizing representations received on this question, and giving particulars of membership in each association concerned, is attached for the information of members.

All of which is respectfully submitted.

Chairman.

SUPPLEMENTARY STATEMENT REGARDING THE ENGINEERING PROFESSION (ALSO THE LAND SURVEYORS, PHYSICISTS, CHEMISTS AND SCIENTIFIC WORKERS) WITH PARTICULAR REFERENCE TO APPLICATION OF BILL 195.

In reviewing the position of the provincial associations of professional engineers, attention might first be drawn to the nature of the membership of these bodies. Registration as a member of a provincial association gives the individual professional engineer the right to practise professional engineering in the province concerned and to call himself a professional engineer. In this respect the engineering profession is in a position somewhat analogous to that of the professions such as law and medicine.

It has been submitted that the engineering profession is unlike the others mentioned in that a large proportion of professional engineers actually function as employees on somebody's payroll. One such group has been mentioned as having a strength of 510 engineers covered by a single collective agreement with one employer.

These employed engineers, however, are not in quite the same position as other "craft" units in that they enjoy under provincial legislation, equal status as members of an association with those engineers who come in the employer category. Reference has been made to the fact that each provincial association may in some ways be regarded as a "union" composed of individuals who have the same status as members, regardless of whether they are employers or employed, and regardless of any difference in age or the degree of responsibility assumed in management.

The official views of the eight associations may be briefly summarized as follows, the approximate present membership being given in each case:

Nova Scotia (344 members)

The views of this association are indicated by the action already taken in securing from the provincial legislature, exclusion of members of the engineering profession "qualified to practise under the laws of a province and employed in that capacity" from the definition of "employee". This association has set up an industrial relations committee from its own membership "to negotiate for and on behalf of any member or engineer-in-training in any matter pertaining to his welfare as a professional engineer or engineer-in-training". It is stated that the duties of this committee will be to consider claims from registered engineers of unjust treatment, cases of low salaries, etc.

New Brunswick (240 members)

There is a telegram from the president of this association dated April 27, 1948, stating: "Our association favours bill as it stands excluding professional engineers".

Quebec (3,000 members)

There is a letter from the president of this association dated May 1, 1948, stating: "I submit that our corporations views be recorded as favouring the exclusion of engineers as presently worded in Section 2 (i) (ii) of Bill 195 presently before the House". This letter reaffirms the views of corporation formally recorded at a meeting of January 27, 1947, in a statement which includes the following paragraph: "It is evident, therefore, that the wish of professional engineers is that their interests be served through the medium of their professional societies and associations, without need of recourse to the machinery and procedure of collective bargaining under the auspices of the labour laws".

The full statement was published in the bulletin of the Quebec Corporation of Professional Engineers, which goes to all members, some 15 months ago. It might be mentioned that in Quebec members of professional organizations under provincial statutes (including engineers) are excluded from the application of provincial labour laws as they stand today.

Ontario (6,500 members)

The Council of the Ontario Association at its regular quarterly meeting (April 23 and 24, 1948) passed the following resolution: "Resolved that a telegram be sent to the Minister of Labour at Ottawa advising him that the Council of the Association of the Professional Engineers of the Province of Ontario is in favour of the retention of the clause in Bill 195 which excludes professional engineers from the provisions of the Act".

Manitoba (340 members)

Under date of April 30, 1948, the Registrar of the Manitoba Association wires as follows: "The Association of Professional Engineers of Manitoba desires that engineers be included in exclusion clause of Bill 195 stop no person or organization has authority to offer any differing opinion on our behalf".

Saskatchewan (151 members)

The Registrar of the Saskatchewan Association has wired under date of April 28 as follows: "The Council of the Association of Professional Engineers of Saskatchewan unanimously requests adoption Bill 195 as drafted to exclude engineers from its operation".

Alberta (510 members)

The Registrar of the Alberta Association has wired under date of May 3, 1948, to the Minister of Labour and of Fisheries endorsing Section of Bill 195 excluding engineers from status of "employee", "As the Association of Professional Engineers of Alberta with 510 registered members has continually asked through office of Canadian Council of Professional Engineers and Scientists and last affirmed January 12, 1948 that engineers be granted same professional recognition and exclusion as other professional groups."

British Columbia (1,030 members)

The Registrar of the British Columbia Association wired as follows: "Following resolutions passed by B.C. Council August nineteen forty-four and sent to Dominion Council quote one In order to implement the desires of the members on this issue they ask for complete exclusion from P.C. one thousand three for all members engineers in training and engineering pupils of the association stop two in the event of failure to obtain exclusion they request that P.C. one thousand three be amended so that for the purpose of collective bargaining professional engineers will be represented by professional persons stop believe resolution number two would be favoured by majority of members now".

This wire is followed by a letter dated May 7, 1948, in which it is stated that the Executive Committee of the B.C. Association on May 5, 1948, agreed to send a wire to B.C. members of parliament to the general effect that the definition of "employee" contained in Bill 195 should not include the members of the engineering profession.

The combined membership of these eight provincial organizations set up under provincial statutes is slightly over 12,000, counting full members only.

Views Contrary to Those of the Associations

The principal submission taking a stand opposed to that of the official views of the councils of the various professional associations is that from the Federation of Employee-Professional Engineers and Assistants. This body has submitted a brief direct and, in addition, has been spoken for by its solicitors, Messrs Fleming, Smoke and Mulholland.

The federation has a membership of 1,100 in Ontario and Quebec and is the only organization in Canada representing employee-professional engineers exclusively. On behalf of units of the federation, five collective agreements have been negotiated and executed under the labour codes (stemming from P.C. 1003); in a sixth case an interim agreement has been made for six months; in six other cases negotiations are pending or about to commence leading to agreements.

The federation submits that if Bill 195 is passed as now worded, all the above certifications will be invalidated.

It is further submitted by the federation that none of the provincial professional engineering organizations are employee organizations as they have a great many members in the consultant, supervisory, or management classes.

It would appear that the passage of Bill 195 as now worded would leave such collective bargaining units with only the alternative of operating outside the provisions of the proposed labour legislation without any of the sanctions provided for other industrial or "craft" groups.

The plea of such engineers as are members of this federation, and of any others who may feel similarly towards the question, is to the effect that the word "engineering" be removed from the list of professions to be excluded from the definition of "employee". This is in direct conflict with the submission of the provincial associations.

Other Professional Groups

Submissions have been received from all of the provincial Associations of Land Surveyors requesting that their profession be named along with the others whose members are to be excluded from the definition of employee.

The Canadian Association of Physicists have asked to be treated as a profession and in that connection submitted a proposal for an additional definition of "professional employee".

The submission of the Chemical Institute of Canada is already before the committee. (See page 35 of the minutes of proceeding and evidence.)

It might be pointed out that those who do not enjoy full membership in one of the provincial groups set up under provincial legislative authority would still remain as "employee" under Bill 195 as now drawn. Such persons include "engineer-in-training", "engineering pupils" and similar categories in those provinces in which they exist.

Individual communications have been received in substantial numbers. From the province of Quebec 29 individuals have wired or written protesting the exclusion of professional engineers from the definition of "employee" and 81 have supported exclusion. From Ontario 29 have protested exclusion of engineers and 98 have supported exclusion.

The Canadian Association of Scientific Workers has written under date of May 5, 1948. The main point in their letter is a request for the removal of the words "architectural" and "engineering" from Clause 2 in Section 2, Sub-section 1 on page 2 of the proposed Act. Their letter points out that their association includes in its membership, engineers and other scientists. While it does not quote the strength of their association at the present time, the number given in the Thirteenth Report on Organization in Industry, etc., of the Department of Labour, 1947, is 500.

A letter has been received from the Institute of Radio Engineers (The Canadian Council) dated May 4, 1948, outlining the history of collective bargaining from 1944. It concludes with the following sentence: "It seems to us that a grave injustice will have been done if Bill 195 is allowed to go through and become law as it is with no provision for collective bargaining for these very important groups".

The CHAIRMAN: In the second place, we have received a brief from the Board of Trade of the city of Toronto. We had a sufficient number of copies prepared for the members of the committee, so I will ask the clerk to distribute them.

I have also received a brief from the Canadian Council of the Institute of Radio Engineers Incorporated. The chairman, Mr. Howes, came to see me yesterday and he has agreed to have a sufficient number of copies prepared for the use of the members of the committee and they will be available by next Monday.

I have also received a brief from the Northern Electrical Engineering Employees Association. I will have a sufficient number of copies mimeographed and distributed as soon as possible.

Now, I have a wire from Mr. A. Aitken, Commissioner of the Regina Chamber of Commerce, reading as follows:

> Regina, Sask., May 7, 1948
>
> The Honourable Humphrey Mitchell,
>
> Minister of Labour, Ottawa, Ont.
>
> The Regina Chamber of Commerce endorses recommendations Canadian Chamber of Commerce *re* Federal Labour Relations Code and further recommends that Chairman Labour Relations Board or subsidiary board be members of the judiciary Stop That a government supervised secret strike vote be required Stop That the Federal Government have some responsibility for boards set up under enabling provincial legislation Stop That provision be made for appeal from provincial boards to Canada Labour Relations Board Stop Your favourable consideration of the above would be appreciated Stop Copies to Prime Minister and Hon. J. G. Gardiner Stop
>
> A. AITKEN, *Commissioner,* Regina Chamber of Commerce.

I also have a submission from the Railway Association of Canada which was referred to at our meeting of April 27. As this was a three-page submission it was decided to refer it to the steering committee which in turn, decided to give it the same treatment as was given to submissions of the other central labour and management organizations. The document is to be placed on the record. Would you like to have me read it now?

Mr. JOHNSTON: How long is it?

The CHAIRMAN: Three pages.

Mr. JOHNSTON: You had better read it, if there is to be any discussion.

The CHAIRMAN: The letter is addresed to the chairman and reads as follows:

> The Railway Association of Canada
> 437 St. James Street West, Montreal 1. April 23, 1948.
> 29.97
>
> P. E. COTE, Esq., M.P., *Chairman,*
> The Standing Committee on Industrial Relations,
> Ottawa, Ont.
>
> *Re:* Bill 195, The Industrial Relations and Disputes Investigation Act.
>
> Dear Sir:—The Railway Association of Canada is strongly of the opinion that the wide definition of the word "employee" as used in the Act brings within its scope persons whose duties to their employers, particularly railway companies, are of such nature that the inclusion of such persons would be seriously detrimental to the employer. It submits that section 2(*i*) (1), containing exclusions from the definition, should be expanded along the lines mentioned at the foot of this submission for the following reasons:
>
> A collective agreement is in the nature of a contract between two parties, the employer on the one hand and the employee (represented by a certified bargaining agent) on the other. Both employer and employee have their respective rights under the agreement and each is entitled to see that his rights are respected. A corporation can act only through its employees or agents and it is essential that in acting for his employer

no employee or agent have an interest in the subject matter which could possibly be adverse to that of the employer. Otherwise, such agent or employee is placed in an invidious position.

Many persons are employed in the organization and operation of a railway company whose duties relate to such things as confidential financial matters, confidential correspondence, the issuing and enforcement of instructions, or the hiring, discharging, promoting, demoting or disciplining employees, or the effective recommending of such actions. Such employment is either of a confidential character or involves the exercise of management functions.

It would be difficult, if not impossible, for employees whose duties to their employers are of the type above indicated to carry out their whole duties to their employers if the terms of bargaining agreements being negotiated between their employer and the bargaining agents of the trade unions (of which they may, or may not, be members) were to apply to them. The association submits that employees whose duties are of these types should be excluded from the definition of "employee" in the Act.

The association submits that ambiguity exists in clause 2 (*i*) (1) of the bill as drafted and considers that this ambiguity would be removed and that its submissions as aforesaid would be implemented by substitution for this clause 2 (*i*) (1) the following:—

> A manager or superintendent or any person who has authority to hire, discharge, promote, demote or discipline employees or to recommend effectively such action or any other person who, in the opinion of the board, exercises management functions or is employed in a confidential capacity.

The Railway Association hereby requests that it be permitted to make oral representations to your committee on the matters aforesaid.

All of which is respectfully submitted.

Yours truly,

(Sgd.) J. A. BRASS,
General Secretary.

Mr. JOHNSTON: Did you answer the other request with respect to the oral representation which was desired?

The CHAIRMAN: That request was answered, yes.

As you will note, in the report of the steering committee, there are certain briefs which have been examined and distribution among the members of this committee is being arranged. One of those briefs is from the International Nickel Company of Canada Limited, and it is now being circulated.

I would like to call the attention of the committee to a suggestion which was made at the last meeting with respect to our further sittings. It was suggested, if my recollection is correct, that perhaps we could meet a little more often this week. I have inquired and I can say this room will be available tonight and again on Thursday evening if the committee wishes to sit on those two evenings. We may also have this room available for tomorrow morning if you would care to sit. I would invite suggestions on this particular point.

Mr. TIMMINS: Mr. Chairman, some of us are members of this committee and also of Banking and Commerce which is meeting right now. Banking and Commerce usually meets on Tuesday and Thursday nights and we will be required to attend both meetings at the same time if we follow your suggestion. Wednesday would seem to be a day on which we could meet but I do not think Tuesday and Thursday would be satisfactory.

The CHAIRMAN: I made particular inquiries with respect to those two evenings because of the fact there are three committees sitting in the afternoon of the same days—Tuesdays and Thursday afternoons. In the evenings on those days only Banking and Commerce sits between the hours of eight and ten o'clock.

Mr. JOHNSTON: My view is that we should not start to crowd the meetings. When I was on the Prices committee that committee sat twice a day four days a week and it sat once on the fifth day. That was entirely too much and I am of the opinion you are going to crowd this committee as well. I think the way in which we are sitting now is just about right. I would not want to see our sittings changed. It may be quite true that some members wish to get away for an election or something of that nature and if they want to get away let them go. I am against having more committee meetings than there are now. We have our work in the House to carry on, most of us being interested in the legislation that is now going through, and extra sittings would be too heavy. We cannot attend in the House and in all the sessions of our committees when there are two or three meetings in a day.

The CHAIRMAN: It might expedite the matter if someone would put a motion one way or the other.

Mr. JOHNSTON: I would move that we continue sitting as at present.

Mr. SINCLAIR: I would move an amendment adding Tuesday and Thursday evenings.

Mr. GILLIS: It is not a matter of getting through this work, it is a matter of doing a job that has to be done, and doing it properly. As Mr. Johnston suggested I am interested in certain things going through the House and I think if we put our mind to this bill and continue as we are, forgetting the briefs—the briefs will have no influence on what is going to be written into the bill—we will get along very well. We have heard all the arguments contained in the briefs over the past years both pro and con. We have a specific matter here—the bill—and if we get down to it and go over it clause by clause as we are doing now, with our minds made up as to what we are going to do, sitting as we are now sitting, I think we will make the most constructive and rapid progress. This business of sitting Tuesday and Thursday nights is not satisfactory. Half of the members will not be present and the members present will not be able to consider the bill as they should. I think myself if we decide to go ahead as we are and take the bill, leaving out the verbiage, we will make rapid and constructive progress.

Mr. McIVOR: These evening sittings are pretty hard on some of the older fellows but I think you might sit more often in the mornings. I want to see the bill go through this year and to that end I do not care how often we sit.

Hon. Mr. MITCHELL: I do not want to speak too long, but it does seem to me the most practical course to adopt would be the one suggested by Mr. Sinclair. It might be all to the good if some of us were not in the House; it might expedite the business of the House. Do not forget we are back to a peace-time House and those of us who have sat in the House in peace-time know there is more talk than there is during a war. It does seem to me we might meet in the evenings, but taking into consideration the question raised by Mr. Timmins and if a member is vitally interested in a particular section but is unable to be in attendance, the section might be allowed to stand until he can be present. Human beings being as they are, I think you will find when the month of June rolls around there will be a great number of members who will go home, for very obvious reasons. There will not be any pay days after the month of June.

Mr. LOCKHART: Is that the real reason, do you think?

Hon. Mr. MITCHELL: Well, it has an influence. Every labourer in worthy of his hire. If we did sit on these evenings or on other occasions, we could at least get this bill through. After all is said and done, this is legislation. I believe the people of this country, not only those directly affected by the bill itself, expect us to pass this legislation this year.

You know what happens in the dying days of the session. It never fails. History has a bad habit of repeating itself and it does so every twelve months. Everyone is in a hurry to get home and legislation is left over until the next year.

Mr. MACINNIS: I want to see this bill go through this session, but I cannot accept the viewpoint of the Minister of Labour that, if someone is absent from the House that would, perhaps, be a good thing. The next step would be to say that if some of us were not here at all, it would be even better.

An Hon. MEMBER: Hear, hear.

Mr. MACINNIS: That is the totalitarian mind which develops over a period of time. The person who said, "Power corrupts," was quite right. If some of us were not able to be in the committee, that would also be a good thing because the bill would pass much quicker. I do not think that is a good philosophy.

We should, I think give due consideration to this bill. We have a very representative meeting this morning and I am sure that situation will continue after we have dealt with the matters which are to come up this morning. There will be no difficulty in getting this bill through. I am interested both in this bill and in certain things which are coming up in the House. I do not think we should decide to sit Tuesday and Thursday nights, at least until we see how far we go today or tomorrow. If the committee wishes to sit on Wednesday night, that will suit me. I do not think we should rush this matter too much.

The Minister of Labour said there will be no pay days after June. Well, surely, that is an insult to the members of the committee. There are enough legal men here to know we are not paid by the year, we are paid for the session no matter what length of time a session takes. The people who are critical of absenteeism in industry have no business absenting themselves from the House when there is legislation to be considered.

Mr. SMITH: I am in favour of the sittings remaining as they are. Next Tuesday night the budget comes down and everybody wishes to be in the House. If we could limit these debates such as we are having now, we could finish this bill in about three more sessions which would give us ample time to consider it in the House. We have made good progress and I think we should continue as we have been. Why not wait until we see whether we are in difficulty or not before we start crowding the sessions.

The CHAIRMAN: Could we allow this motion to stand until another meeting? In the meantime, would the committee be agreeable to sitting tomorrow morning? We could have this room for tomorrow morning.

Mr. ADAMSON: We have a caucus.

The CHAIRMAN: Then, let us adjourn the discussion of this proposal.

We now revert, gentlemen, to the consideration of clause 32. We have before the chair a motion by Mr. Timmins that section 8 of clause 32 be deleted.

Mr. CROLL: Question?

The CHAIRMAN: Are you ready for the question?

Mr. MACINNIS: Before you put the motion, I suggest to the committee that they seriously consider what they are doing. When industrial relations legislation was first passed in 1907, legal representation before conciliation boards was prohibited without the consent of both parties to the dispute. I am satisfied there was good reason for that. It has worked well during the forty years or more it has been in operation. I do not think we should change it now.

A labour dispute is not a legal matter. It is a process of discussion between two parties out of which a contract is developed. If we are to have greater harmony, it can only come about if both sides deal freely with the question without legal quibbles. I have in my hand an item I cut from the paper *Labour*, the organ of the railwaymen of the United States It came to hand yesterday and it is dated May 8. It refers to the negotiations which led up to the recent developments. It reads as follows:

> Almost from the beginning to the end one of the real troubles in this dispute has been that the railroads have shifted their responsibility over to lawyers, a union leader declared. For example, during the emergency board hearing they had a battery of sixteen lawyers to handle their case while we had only one. Thus, collective bargaining on the iron horse has degenerated into litigation. You cannot have peace on the rails that way.

I suggest to this committee, before they throw conciliation boards open to the lawyers for argument, the employers will have the lawyers because they have no faith in themselves. You know exactly what you will get in a discussion of that kind, and that is my last word.

Mr. McIvor: Mr. Chairman, I am not a lawyer; neither have I a judicial mind, but I do not like this clause. I do not know who fathered it. I know that in the medical profession there are specialists and it is necessary to have these specialists. In the legal profession, we have corporation lawyers who have studied corporation law; we have municipal lawyers; we have business lawyers and we also have lawyers who have studied labour legislation and are up to date in that field. In small unions or even small business corporations, the leaders are not up to date in the field of labour legislation. The guidance of a lawyer is needed. You know, these lawyers do not push themselves in very much, that is when it suits them or suits the people for whom they are working. My experience with lawyers is that they have been a great help to the people they represent. Sometimes the fees are a bit high, but I believe they are well worth their fees, and this is especially true of the labour organizations these lawyers have represented. I believe these lawyers are necessary to the progress of labour so that labour and industry will be well guided in the matter of labour legislation.

The Chairman: Before I call for a vote on this motion, I have to give credit to whom credit is due. This motion is sponsored by Mr. Merritt, that subsection (8) be deleted. All those in favour of the motion will raise their hand.

I declare the motion carried.
Carried.

Shall clause 32 as amended carry?
Carried.

Section 33. Shall the section carry?
Carried.

Section 34. Shall the section carry?
Carried.

Section 35. Shall the section carry?
Carried.

Section 36.

Copy of report to parties.

Publication.

> On receipt of the report of a Conciliation Board the Minister shall forthwith cause a copy thereof to be sent to the parties and he may cause the report to be published in such manner as he sees fit.

Mr. ADAMSON: Just before this section is carried, there is a mention in the previous section, 33, of publicity. Now, the minister has a definite statement there that these things shall not be made public by the board. Then, it leaves in the hands of the minister the power to make public what he deems fit and not to make public what he does not deem fit.

Hon. Mr. MITCHELL: Only the report; when the report is submitted to me. The procedure is this; first of all we send copies of the report to the parties concerned. Then, we wait until we are reasonably sure it is in the hands of the parties concerned and a press release is issued. That is the procedure.

The CHAIRMAN: Shall the section carry?
Carried.

Section 37. Shall the section carry?
Carried.

Section 38. Shall the section carry?
Carried.

Section 39.
Offence of employer decreasing wage rate or altering terms of employment.

ENFORCEMENT

39. Every employer and every person acting on behalf of an employer who decreases a wage rate or alters any term or condition of employment contrary to section fourteen or section fifteen of this Act is guilty of an offence and liable on summary conviction to a fine not exceeding

(*a*) five dollars in respect of each employee whose wage rate was so decreased or whose term of condition of employment was so altered, or

(*b*) two hundred and fifty dollars,

whichever is the lesser, for each day during which such decrease or alteration continues contrary to this Act.

Mr. CROLL: Section 39 introduces, of course, what is comparatively new in that a police magistrate will be the man who will, in all probability—as a matter of fact, he will deal with this matter. Now, there is some objection to that. The United States uses the National War Labour Board who are acquainted with the legislation, and have some labour background and some knowledge of these matters. It would seem to me you would get a more uniform practice and have a better application to the case itself if the matter went before the labour board rather than before a police magistrate.

Mr. MACINNIS: May I ask who is responsible for bringing cases of this kind before the court? Do violations of this section come under the National Labour Board for enforcement or will it depend on the employees concerned to take action?

Hon. Mr. MITCHELL: It can be done by an organization or the employees when they get leave to prosecute from the National Labour Relations Board.

Mr. CROLL: My point, then, is stronger. If they have to go to the board and make application, they have to make out a prima facie case. They have to disclose all the evidence before they are given an opportunity to prosecute. Oh, I see; you have changed it now, and it is the minister who gives permission.

Hon. Mr. MITCHELL: Yes.

Mr. MACINNIS: It seems to me, since you have to go to the board—

Hon. Mr. MITCHELL: It is now the minister.

Mr. MacInnis: The same thing applies, that the person who can give permission to bring the case to the court should bring the case to court himself. It should not be left to the employees to do that.

Mr. Gillis: I agree with Mr. Croll on this. I think a new section should be written in place of this one, to bring about what I have in mind.

Section 3 of this particular section 40 definitely sets out that magistrates, judges and so forth will enforce this Act. Now, to my mind, the Department of Labour, under whose jurisdiction this Act will come, is indeed setting up something new in Canada, a national code which brings the rule of law into labour relations. In other words, you are setting up a labour jurisprudence which is separate and apart from the ordinary laws of the country. I think the enforcement of this Act should be left to the Department of Labour. I believe the people who should determine whether or not there is any infraction of the Act either by an employee or an employer, should be the National Labour Relations Board. This board is dealing with economic matters. It hears all the evidence and assesses the facts. Then, I think that board should be in a position to say, so far as the enforcement of the Act is concerned, there has been an infraction of the Act. The board would determine that. The only place the courts of the country would come into the matter would be when fines or penalties were to be imposed. Then, the labour board could pass the matter over to the judge or magistrate for the purpose of imposing the necessary fine. The determination of a sentence under this particular Act should be, I think, the responsibility of the National Labour Relations Board and the Department of Labour because this code creates a rule of law separate and apart from the ordinary laws handled by judges and magistrates.

I will not be satisfied with this clause because, in the final analysis, the administration of this Act and the enforcement of this Act has got to be good. If you put the War Labour Board in the position of having to take evidence for weeks to determine whether or not there has been a violation of the Act and, after that you place the union or the employer in the position of having to seek the permission of a board or the minister to go before the court and the case then has to be dragged through the courts with a battery of legal experts on both sides, labour disputes are going to take a long time to settle. I think it would retard the labour relations machinery we are attempting to set up under this Act.

I would move that this particular section stand and that the steering committee be empowered to look it over as soon as possible and draft a section to replace this one. Such a section should place the responsibility on the Department of Labour and the National Labour Board for determination of infractions of this Act.

Hon. Mr. Mitchell: I should say this; that I regret I have to fly to Toronto in a few minutes and so must leave you, but I shall be back by six o'clock. I believe what is in this section is fundamental. I have always taken the view that the less you think about prosecutions the better it is for labour disputes. If I had to take a chance on the decision of a politician or a judge, I would take the judge every time. We have to be careful in legislation of this description that decisions are not made on a political basis. Frankly, under the I.D.A. Act, I have knowledge of only a couple of prosecutions since 1906. I believe that is the basis of the success of the I.D.A. Act. The labour disputes in this country would now go before the local magistrate who understands local conditions or before a higher court. I am thinking of the working man, not about the other side of the picture. The courts have had generations of experience in adjudication of disputes of all kinds and I think we can say, by and large, they have been exceptionally fair.

Do not forget this; the National Labour Board, to all intents and purposes, is an advisory board which is appointed upon nomination. I hope we never get away from that principle. There is a chairman, a vice-chairman and eight other men, equally representative of the dominant labour organizations of this country and the employers. I believe you destroy the usefulness of the board if the question of prosecutions is cluttered up with its normal work. I believe that sincerely, and I think it is fundamental.

Mr. Croll: You chose, a minute ago, as between the board and a politician.

Hon. Mr. Mitchell: I would rather have a judge

Mr. Croll: In this case, it is the board or the politician. If we passed that, you are the only one who can give authority to prosecute. You are returning it to the politician.

Hon. Mr. Mitchell: I have no objection to this. We spent a lot of time considering whether the minister should be given the right to give permission to prosecute. If the committee, in its judgment, thinks that permission should be handed back to the board, I am quite prepared to accept that amendment. I believe it is vital to the protection of the average man in this country when he believes has has been dealt with unjustly, that he have the opportunity of appearing before the courts.

Mr. Croll: For your own good, you ought to get out of this position.

Hon. Mr. Mitchell: The only thought was that I am available every day and the board only meets once a month or so. So far as I am concerned, if the committee wishes to put that responsibility on the board, I am prepared to accept it.

Mr. Sinclair: I should like to comment upon what Mr. Gillis has said, that this is a new labour law and the Labour Department should be responsible for carrying it out. If you carry that thought to its logical conclusion, the income tax department should prosecute infractions of the Income Tax Act and the fisheries department should prosecute infractions of any of its acts. I think it is a far better thing not to have this decided by the labour board which represents labour on the one hand and the employers on the other and therefore is partisan to that extent, but by a judge who is skilled in hearing evidence and determining whether offences have been committed. After all, there is not much difference between arguing before the labour board and arguing before a magistrate or judge. The only difference is that the judge is impartial. He hears arguments and makes decisions every day in the ordinary course of his duties.

Mr. Archibald: As the section now reads, if someone breaks the law, permission has to be obtained to appeal to a judge.. I believe if the law has been broken the labour board should prosecute in much the same manner as the Wartime Prices and Trade Board did during the war. Such a provision is not contained in this Act, is it? The Wartime Prices and Trade Board protected the public better than any other body during the war. Such a provision should be incorporated in this Act.

Mr. Case: You want to take the minister out of the picture?

Mr. Archibald: I do not want to see the minister give permission to the employers and employees to have a legal wrangle. The labour board should be called upon to enforce the Act and drag the parties before the courts.

Mr. MacInnis: I can understand the minister not being too anxious to have to make a decision as to whether or not there has been a violation of the Act, or being put in the position where he would have to take action. However, in view of the fact either the minister or the board has to decide whether there has been a violation of the Act, why should the union have to bring the employer into court? This is the government's act; this is the government's law. If the employer has broken that law—

Mr. Sinclair: The minister only decides whether there is a case. He does not decide whether there has been a violation.

Mr. MacInnis: He decides that, in his opinion, there has been a violation of the law.

Mr. Sinclair: No.

Mr. MacInnis: Then, if he does not, on what basis does he refuse permission?

Mr. Sinclair: Because he does give permission, it does not mean there has been an infraction of the Act.

Mr. MacInnis: Then, it is not up to the union to bring the employer into court. If the income tax law is broken, it is not up to someone else to bring the offender into court. The government brings the offender into court. Why should it be left to private individuals who may be ill prepared to prosecute a case in the courts?

Hon. Mr. Mitchell: There is a point which I forgot to mention. Since I have been the minister, we have not prosecuted anybody and I think the labour relations of this country have benefited from that position. I have had this experience, Mr. Chairman, in industrial inquiry commissions: neither side would budge and wanted to rush to the courts. Oftentimes, they come to the minister. He is able to settle the matter without going to the courts. I would not dwell too much on the punitive sections of this legislation. They are there if people do not act in a sensible manner.

Mr. Archibald talked of the government undertaking prosecution. I do not think the government should be the gravy train for employers or employees who wish to go to the courts. You run into this very serious difficulty which cuts both ways; if all the parties have to do is trot off to the courts, they will be in the courts all the time. There are two sides to every question and people should be able to sit around a table and settle their difficulties. It is for that reason we insist on arbitration. There must be an arbitration provision in the agreement.

I watched the situation in the United States where, originally, such a provision was not insisted upon. The cases just piled up before the boards. In some jurisdictions there were as many as three or four thousand cases awaiting adjudication by the respective labour boards. I believe this is fairly sound legislation. As I say, if you want to make the board responsible instead of the minister, that suits me.

Mr. Adamson: Does this not put the minister in the position of a grand jury, and he has to decide whether there is a true bill or not?

Mr. Smith: The situation is this; I do not care whether it is the board or the minister who makes the decision. If you wish the board to make the decision, it is all right. I imagine the minister would like to be relieved of that responsibility. All we are doing here, it seems to me—I may say I am ready to support Mr. Gillis' motion for reconsideration if we do not get together this morning on the wording of the section. The procedure is the same as going before the grand jury in the province of Ontario. The grand jury returns what is called a true bill. In the province from which I come we have no grand jury and for fourteen years I and I alone decided whether prosecutions would go forward. Now, someone has to accept that responsibility. Two things have to be considered. The first thing is, is there any evidence to present to the court, in this case a magistrate? What really happens is this; the question is asked, is there any hope of a successful prosecution? In practice, that is what is really done. It would then be the duty of the minister or the board to determine that simple question.

In other words, what I am trying to say is this; this Act simply provides a parallel for the ordinary and usual procedure which has worked so well in the administration of justice all these years. It is new jurisprudence, as Mr. Gillis says, but that is what we are trying to do. It does not seem to me to be of value if you have a board which will ultimately determine many things between the parties, to involve that board in small prosecutions all over the country.

A comparison has been made between the labour board and The Wartime Prices and Trade Board. In so far as The Wartime Prices and Trade Board were concerned, that was an emergency situation and it went so far as to tell the person who was prosecuted he was guilty before any evidence was brought forward. Under that Act the onus was on the defendant to prove his innocence. Surely, we all agree the sooner we get rid of that kind of thing in this country the better off we will be. I think, perhaps, we would all be satisfied if the matter of consent were shifted from the minister to the board; that would not take a great deal of the board's time. It seems to me we might compromise on that.

Now, as to the board being commanded by the Act to undertake these prosecutions: the situation might arise where that would occupy pretty much the full time of the board. I have certainly got over the idea that labour cannot afford to prosecute. Labour organizations have arrived, so to speak. They are now in the same position as everyone else. Remember this; in any breach of any statute, I mean of a criminal or quasi-criminal type, someone has to swear out an information that, to the best of his knowledge and belief, a certain offence was committed. You cannot get into any criminal court without swearing out an information. This is done by the individual who thinks he has been wronged.

When the government undertook prosecutions under The Wartime Prices and Trade Board, an information was always sworn out by the officer of that organization who was familiar with the facts. I do not think we, as a labour committee, would want to make any drastic change in that particular scheme or in that particular principle of prosecution which has served us so well for such a long time.

Mr. MacInnis: May I ask Mr. Smith a question, just to improve my own knowledge of the matter? He compared this procedure with that of a grand jury. After the grand jury has found a true bill, who then is responsible for the prosecution?

Mr. Croll: The Crown.

Mr. Smith: Let us get this straight; the prosecution began long before that, when the information was laid.

Mr. MacInnis: Quite true, but when the jury decides there is a case, then the Crown prosecutes. Here, you have a body deciding there is a case and leaving the prosecution to someone else.

Mr. Smith: That is always true in summary matters. There is nothing new in that.

Mr. Croll: In connection with summary matters, I could walk in and lay an information against you for assault. I could call on the Crown to prosecute. Those are my rights. Usually I do not do that. The usual practice is for me to bring my own lawyer, but I can call upon the Crown to do it. In this case, I cannot call the Crown to do it and that is the difficulty.

Mr. Archibald: The only law I ever studied was K.R. and O., and I had to do that to keep out of jail. I helped to negotiate one agreement last year for the Seafarers' International Union. It is a small local. If it had been necessary to go before the courts, it would have broken the union. We would never have lasted. Such a situation could easily apply in the case of a big union dealing with a small individual company. The union could break the company. I do not think it is fair to either party to leave it to the individuals concerned. I am still of the opinion it should be the board that should prosecute.

Mr. Case: I just have one question. The minister said the board would not always be in session and that might delay action. Would it complicate things if the section read, the minister or the board, and a person could go to either one?

Mr. Croll: You would have a shifting of responsibility, passing the buck.

Mr. Case: But you would get action.

Mr. CROLL: No, both of them would duck. As a matter of fact, Mr. Dickie has just pointed out to me the answer. He asked me a question I could not answer. What is to stop the trade union from laying the information, walking into the Crown and saying, "there is the evidence; you go ahead and prosecute." I do not think there is anything to stop them from doing that. It strikes me that is the answer.

Mr. SMITH: That is an answer, there is no question about that. However, in a great many places in this country there are no crown prosecutors. Then, I suppose you would proceed with the provincial police and they would no doubt take over for you. We have not crown prosecutors scattered all across the country.

Mr. CROLL: These cases seldom arise except in large industrial areas. The only one we have had in thirty years is the one concerning the seamen. I believe an application was made by the Imperial Optical Company, but that concerned the Ontario board.

Mr. BROWN: There have been a couple of applications.

Mr. CROLL: This is the only one in which leave has been granted?

Mr. BROWN: Even in cases where leave has been granted, prosecution has not proceeded.

Mr. SMITH: Why should we not pass this section and try it for a year. We are going to have to live by experience. I noticed in a despatch from Montreal we are going to meet again in 1949, anyway.

The CHAIRMAN: Shall the section carry?

Mr. GILLIS: No, Mr. Chairman, I moved a motion.

Mr. CROLL: Then, let it stand.

Mr. GILLIS: That is what I suggested. This is the meat of the bill.

The CHAIRMAN: Is it the wish of the committee that the section stand?

Mr. SMITH: If we permit the section to stand, let somebody put down on a piece of paper what he believes should be done so we can see what we are talking about.

The CHAIRMAN: Would you let me have your suggestions?

Mr. GILLIS: Yes.

The CHAIRMAN: Shall section 39 stand?

The section stands.

Section 40.

Unfair labour practices.—Offence.

40. (1) Every person, trade union and employers' organization who violates section four or section five of this Act is guilty of an offence and liable upon summary conviction,

Fine.

(*a*) if an individual, to a fine not exceeding two hundred dollars; or

(*b*) if a corporation, trade union or employers' organization, to a fine not exceeding five hundred dollars.

Payment to employee.
Reinstatement.

(2) Where an employer is convicted for violation of paragraph (*a*) of subsection two of section four of this Act by reason of his having suspended, transferred, laid off or discharged an employee contrary to this Act, the convicting court, judge or magistrate, in addition to any

> other penalty authorized by this Act may order the employer to pay compensation for loss of employment to the employee not exceeding such sum as in the opinion of the court, judge or magistrate, as the case may be, is equivalent to the wages, salary or other remuneration that would have accrued to the employee up to the date of conviction but for such suspension, transfer, lay-off or discharge, and may order the employer to reinstate the employee in his employ at such date as in the opinion of the court, judge or magistrate is just and proper in the circumstances in the position which the employee would have held but for such suspension, transfer, lay-off or discharge.
>
> *Refusal to comply with order.*
>
> (3) Every person, trade union and employers' organization who contrary to this Act refuses or neglects to comply with any order of a court, judge or magistrate made under this section or any lawful order of the Board is guilty of an offence and liable on summary conviction to a fine not exceeding fifty dollars for each day during which such refusal or failure continues.

Mr. LOCKHART: Do not sections 39 and 40 pretty well go together, if you decide on the principle of whether it shall be the board or the minister?

Mr. CROLL: There is another portion of section 40 which is of interest. You will notice the penalties are $200 and $500, and that relates back to section 41 which deals with unfair practices.

Now, there is a section in the Criminal Code, section 502 (*a*), wherein the very same offences such as refusal to employ, intimidation or conspiracy are set forth. Under that section the penalty is $100 for the individual and $1,000 for the corporation. I am wondering whether, in this bill, we are not going to confuse things by having penalties different from those contained in the Criminal Code. There might be some reason for doing so, but the offences are the same, so why not have the penalties the same. There has been a reduction in the penalty in one instance.

Mr. SMITH: Before that question is answered, since the minister has had to leave, I wonder if the committee could not agree to having Mr. MacNamara take such part in our proceedings as the minister might have taken and give answers to these questions?

Agreed.

Mr. MACNAMARA: Thank you, gentlemen. On this question, we considered the whole question of penalties. Actually, we have not very much faith in penalties, anyway. We would like the committee to feel free to make the penalty whatever the committee feels would be adequate. We have no objection to Mr. Croll's suggestion.

Mr. CROLL: I am just suggesting that they be uniform.

Mr. JOHNSTON: Why were they made different in the first place? There is a difference, but why?

Mr. MACNAMARA: I think in this particular section we are dealing with penalties on a different basis.

Mr. CROLL: I was talking about section 40(*a*).

Mr. MACNAMARA: I think what we did was to follow 1003 which contained this wording. What the reasons were for that originally, I am afraid I cannot tell you.

Mr. CROLL: I will move an amendment that the $200 be changed to $100 in line 20 and the $500 be changed to $1,000 in line 23, I think it is, of the section.

Mr. MacNamara: No objection, Mr. Chairman.

The Chairman: Would you please repeat your amendment?

Mr. Croll: My amendment was to section 40, part (1), that $100 be substituted for $200 and $1,000 be substituted for $500.

The Chairman: We have a motion by Mr. Croll that $100 be substituted for $200 in line 20 and that $1,000 be substituted for $500 in line 23 of section 40. Are you ready for the question? Shall the motion carry?
Carried.

Mr. Croll: May I ask one more question? This section 40 is different from the section 40 in the last bill in that you have a reinstatement clause. We recommended that last year and the government saw fit to adopt it. I do not quite follow this; an order is made to reinstate—

Mr. Smith: I think we said the other day that meant to re-employ.

Mr. Croll: Yes, and the employer refuses to re-employ, is there any further step other than prosecution under section 3?

Mr. MacNamara: No. There is quite a heavy penalty, there.

Mr. Croll: That is the enforcement penalty and the only one. He does not go to any other place to enforce it?

Mr. MacNamara: No.

The Chairman: Shall section 40 as amended carry?
Carried.

Section 41.

Lockout.

41. (1) Every employer who declares or causes a lockout contrary to this Act is guilty of an offence and liable upon summary conviction to a fine not exceeding two hundred and fifty dollars for each day that the lockout exists.

Idem.

(2) Every person acting on behalf of an employer who declares or causes a lockout contrary to this Act is guilty of an offence and liable on summary conviction to a fine not exceeding three hundred dollars.

Strike.

(3) Every trade union that declares or authorizes a strike contrary to this Act is guilty of an offence and liable upon summary conviction to a fine not exceeding one hundred and fifty dollars for each day that the strike exists.

Idem.

(4) Every officer or representative of a trade union who contrary to this Act, authorizes or participates in the taking of a strike vote of employees or declares or authorizes a strike contrary to this Act is guilty of an offence and liable upon summary conviction to a fine not exceeding three hundred dollars.

Mr. MacInnis: Who is responsible for initiating proceedings in case of violations of this section?

Mr. MacNamara: It might be the trade union or the employer, depending on the nature of the case. The board, itself, can prosecute but we have had not, so far, done anything of that nature.

Mr. Gillis: That is what we are going to try and fix up in section 39.

The Chairman: Shall this section carry?
Carried.

Section 42. Shall this section carry?

Carried.

Section 43.

Reference of Complaint by Minister to Board.

43. (1) Where the Minister receives a complaint in writing from a party to collective bargaining that any other party to such collective bargaining has failed to comply with paragraph (*a*) of section fourteen of this Act or with paragraph (*a*) of section fifteen of this Act, he may refer the same to the Board.

Consideratioin and Disposition of Complaint.

(2) Where a complaint from a party to collective bargaining is referred to the Board pursuant to subsection one of this section, the Board shall inquire into the complaint and may dismiss the complaint or may make an order requiring any party to such collective bargaining to do such things as in the opinion of the Board are necessary to secure compliance with paragraph (*a*) of section fourteen or paragraph (*a*) of section fifteen of this Act.

Compliance with Order.

(3) Every employer, employers' organization, trade union or other person in respect of whom an order is made under this section, shall comply with such order.

Mr. Croll: Has this been changed from last year?

Mr. MacNamara: It is new, yes.

The Chairman: Shall the section carry?

Mr. MacInnis: Does not this section now put the enforcement of this Act under the War Labour Board? Why is it we shift around from one section to another? In one section the board is enforcing the Act and in another section the employee has to enforce it or the employer has to enforce it. Surely, we should have a uniform procedure in the Act so a person would know just where he stood in regard to it without being a lawyer. It seems that, in this section, the board is all-powerful. The section reads, in part:

> . . . to do such things as in the opinion of the board are necessary to secure compliance with paragraph (*a*) of section 14 or paragraph (*a*) of section 15 of this Act.

It should be necessary to indicate in the Act whether the board is responsible for enforcing compliance with the Act or not.

Mr. MacNamara: This section deals with sections 14 and 15, which relate to the question of collective bargaining. If it is desired to get into a bargaining situation and the employer says, we won't bargain or one party or the other makes a complaint to the minister, the minister refers it to the board. The board sends for the parties and gets them together. In nine cases out of ten, a settlement is obtained. It is not a matter of enforcing the Act and saying, "Well, you are guilty of an offence and you have to go to court or pay a fine"; it is a matter of conciliation. It is a job the board is very well fitted to do and has been doing excellent work in that direction.

Mr. MacInnis: If you get compliance in nine cases out of ten, what action are you going to take in the tenth case?

Mr. Croll: I was just going to ask that question.

Mr. MacNamara: One or the other of the parties may apply for permission to prosecute.

The Chairman: Shall the section carry?

Carried.

Section 44.

Investigation and Report of Alleged Violations.

44. (1) A person claiming to be aggrieved because of an alleged violation of any of the provisions of this Act may make a complaint in writing to the Minister and the Minister, upon receipt of such complaint, may require an Industrial Inquiry Commission appointed by him pursuant to section fifty-six of this Act or a Conciliation Officer to investigate and make a report to him in respect of the alleged violation.

Copy of Report to Parties.

(2) Upon receipt of a report pursuant to subsection one of this section, the Minister shall furnish a copy to each of the parties affected and if the Minister considers it desirable to do so, shall publish the same in such manner as he sees fit.

Consent to Prosecution.

(3) The Minister shall take into account any report made pursuant to this section or any action taken by the Board upon a complaint referred to it under this Act in granting or refusing to grant consent to prosecute under section forty-six of this Act.

Mr. Lockhart: Well, what about the minister—

Mr. Smith: We are going to reconsider this.

Mr. Lockhart: Will this section not have to stand until you decide upon the principle in the former section?

The Chairman: It will be carried subject to the reconsideration of that principle.

Carried.

Section 45:

Prosecution of Employers' Organization or Trade Union.

45 (1) A prosecution for an offence under this Act may be brought against an employers' organization or a trade union and in the name of the organization or union and for the purpose of such a prosecution a trade union or an employers' organization shall be deemed to be a person, and any act or thing done or omitted by an officer or agent of an employers' organization or trade union within the scope of his authority to act on behalf of the organization or union shall be deemed to be an act or thing done or omitted by the employers' organization or trade union.

(2) An information or complaint in respect of a contravention of the provisions of this Act may be for one or more offences, and no information, complaint, warrant, conviction or other proceedings in a prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences.

Mr. MacInnis: There is no departure in law in creating an entity by statute.

Mr. Smith: I do not think you need it, Mr. MacInnis. I believe the definition of a "person" is wide enough to cover this. However, this section does carry the principle of agency a long way in saying that the principal is responsible for the acts of his agent. Where we have gone overboard is in the second part which states an information is not bad merely because it contains several charges. I think that is bad law. However, I am not objecting because these will be informal proceedings.

The CHAIRMAN: Shall the section carry?

Carried.

Section 46. Shall the section carry?

Carried.

Section 47:

GENERAL

Signature to Application, Notice or Collective Agreement.

47. For the purposes of this Act, an application to the Board or any collective agreement may be signed, if it is made, given or entered into

(*a*) by an employer who is an individual, by the employer himself;
(*b*) where several individuals, who are jointly employers, by a majority of the said individuals;
(*c*) by a corporation, by one of its authorized managers or by one or more of the principal executive officers;
(*d*) by a trade union or employers' organization, by the president and secretary or by any two officers thereof or by any person authorized for such purpose by resolution duly passed at a meeting thereof.

Mr. MACINNIS: Is that a typographical error where the section speaks of a "trade union or employer's organization"? Should that be employee's organization?

Mr. TIMMINS: This is an attempt to bind both sides.

The CHAIRMAN: Shall this section carry?

Carried.

Section 48.

Notice by mail.

48. For the purpose of this Act, and of any proceedings taken thereunder, any notice or other communication sent through His Majesty's mails shall be presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of mail.

Service prescribed by regulation.

(2) A document may be served or delivered for the purposes of this Act or any proceedings thereunder in the manner prescribed by regulation.

Mr. SMITH: I believe we have gone altogether too far in section 48. I think we should at least say, "registered mail," in which case one would have to sign a receipt when the mail was received. While we have a wonderful post office, we do know that letters do not reach their destination. I think the section should read, "registered mail." Getting back to the courts now, in which the lawyers operate, we have service by registered mail. I received a notice from The Wartime Prices and Trade Board concerning the amount of rent I am paying and that was delivered by registered mail and signed for. I believe we should have the word, "registered" in there.

Mr. MACNAMARA: There is no objection to that.

The CHAIRMAN: It is moved by Mr. Smith that the word "registered" be inserted between the words, "His Majesty's" and "mails". Shall the motion carry?

Mr. CASE: In the last line, too.

Mr. SMITH: I think you should cut out the words, "to have been received by the addressee in the ordinary course of mail".

The CHAIRMAN: Shall the section be further amended by deleting the words, "in the ordinary course of the mail"?

Mr. CROLL: We just asked that the word "registered" be inserted and that the section be redrafted and brought back here.

The CHAIRMAN: Shall the motion carry?

Carried.

Section 48, as amended—shall the section carry?

Carried.

Section 49 (1) and (2)—shall the section carry?

Carried.

Section 50.

> 50. Failure of a Conciliation Officer or Conciliation Board to report to the Minister within the time provided in this Act shall not invalidate the proceedings of the Conciliation Officer or Conciliation Board or terminate the authority of the Conciliation Board under this Act.

Mr. CROLL: What is this?

Mr. SMITH: I would like to know what it means?

Mr. CROLL: What would happen if I were appointed as conciliation officer and I did not do anything? I could go down to Bermuda for a while and if the minister did not like to hurt my feelings nothing would happen. Perhaps I would be too busy or not available and it would mean that nothing could be done, which would be a horrible situation. If the conciliation officer did not act within a specified time he ought no longer to be a conciliation officer.

Mr. SMITH: I think that it means that such failure will not invalidate the proceedings taken up to that time. What good would it do if you invalidated something which had to be done over again? I think it is a saving clause rather than one with the interpretation which you put on it.

Mr. MACINNIS: In view of section 35 is not this section redundant?

Mr. SMITH: If it is only redundant it does not hurt at all.

Mr. TIMMINS: It only ties in with the time element mentioned in section 35.

Mr. ARCHIBALD: In the case of a board being set up and the parties getting together—and that happened on the west coast and the report came in later—it leaves room for the conciliation and then for the board to meet.

Mr. MACNAMARA: It is purely and simply to avoid the technicalities which we cannot illustrate by anything which has happened in the past. We visualize the chairman of the conciliation board might die or be sick.

Mr. ADAMSON: It is sort of an escape clause.

Mr. MACNAMARA: Yes.

The CHAIRMAN: Shall section 50 carry?

Carried.

Shall Section 51 carry?

Carried.

Shall section 52 carry?

Carried.

Section 53.

53. Part I of this Act shall apply in respect of employees who are employed upon or in connection with the operation of the following works, undertakings or business, namely,

(*a*) works, undertakings or businesses operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada;

(*b*) railways, canals, telegraphs and other works and undertakings connecting a province with any other or others of the provinces, or extending beyond the limits of a province;

(*c*) lines of steam and other ships connecting a province with any other or others of the provinces or extending beyond the limits of a province;

(*d*) ferries between any province and any other province or between any province and any country other than Canada;

(*e*) aerodromes, aircraft and lines of air transportation;

(*f*) radio broadcasting stations;

(*g*) such works or undertakings as, although wholly situate within a province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces; and

(*h*) any work, undertaking or business outside the exclusive legislative authority of the legislature of any province;

and in respect of the employers of all such employees in their relations with such employees and in respect of trade unions and employers' organizations composed of such employees or employers.

Mr. ADAMSON: I want to go back and ask the deputy minister a question. There are certain railways that only operate within the confines of one province, I am thinking of the Pacific Great Eastern and the G.N.N.O. in Ontario. Would they be covered by this section?

Mr. MACNAMARA: They would come under the provincial authority unless parliament declared them the reverse for the general advantage of Canada.

Mr. ADAMSON: I just want to ask another question. We passed special legislation last year with regard to the Hudson Bay Mining and Smelting Company situated on the borders of Manitoba and Saskatchewan and they specifically asked to be allowed to come under this code. Is there anything covering avocations such as that?

Mr. MACNAMARA: I think you pass a declaration that the industry, for the general good of Canada, should come under this section.

Mr. SMITH: I am not going to move an amendment but I think we should pause to consider what we are here doing. I think the section should read and cover those works and employees who come within the jurisdiction of the dominion of Canada. While we set out these things and say that they are within certain jurisdiction, if in fact they are not within that jurisdiction our mere saying so does not affect them one way or the other. The province has its jurisdiction and the dominion has its jurisdiction. All we can do is pass an act which is applicable to the employees of the businesses which come within the orbit of the dominion. The parliament of Canada can pass all the acts it wants and take jurisdiction from the provinces but they will say that it is nonsense and it is no good. I would suggest to the Department of Labour that they reconsider this section from the standpoint I have mentioned. Supposing that we have missed some set of employees or some business which is not covered in this long list. We would look very foolish in saying the act would only apply to those if there were a couple more to which it should apply. It seems to me we are in a position where we should say the section should apply to such business concerns and employers which are within the jurisdiction of Canada. You have accomplished everything which you wish to accomplish and you have covered the possibility of making errors.

Mr. MacInnis: Is not the point raised by Mr. Smith taken care of under (*h*), namely "any work, undertaking or business outside the exclusive legislative authority of the legislature of any province". I think that takes care of everything.

Mr. Johnston: Why have all the rest in?

Mr. Smith: That is my whole point.

Mr. MacInnis: I wish to ask Mr. MacNamara whether subsection (*a*) does not conflict with subsection (*c*)? The last two or three lines of subsection (*a*) include "the operation of ships and transportation by ship anywhere in Canada". In (*c*) you have "lines of steam and other ships connecting a province with any other or others of the province or extending beyond the limits of a province". In my opinion (*a*) includes ships operating anywhere in Canada. (*c*) eliminates ships in the coastal trade of one province. Take a boat which runs from Vancouver or Victoria to Nanaimo, under the section, in my opinion, it would not be included because it is operating somewhere in Canada and it would be included in (*a*).

Mr. Lockhart: Well, Mr. Chairman—

Mr. Croll: Let us have an answer.

Mr. Smith: In other words you could have (*h*) in here and leave the rest alone? For example it seems to me the Northwest Territory has been completely overlooked.

Mr. MacNamara: On the question raised by Mr. Smith as to the general nature of the clause, and that has been made to read that the jurisdiction fall where it may, I would say this follows pretty well the old idea in the I.D.A. Act. It follows advice given us by the Department of Justice and after careful consideration it does have some value as a matter of information to anyone reading the act. They get the general idea as to where the jurisdiction lies. In answer to Mr. MacInnis, it follows sections 91 and 92 of the British North America Act and there is some overlapping there in (*c*). It is in the B.N.A. Act and we have followed it here.

Mr. Smith: Do you not think you should include the Yukon and the Northwest Territories?

Mr. MacNamara: I should think (*h*) covers that.

Mr. Smith: If (*h*) covers it why bother with the rest?

Mr. Croll: It is educational.

Mr. Smith: I do not think it covers the situation because the Northwest Territories is not a province. I wonder if perhaps the department might just consider what I have said.

Mr. Croll: Let this section stand for consideration of the Justice Department.

Mr. Gillis: I do not think there is any necessity of letting it stand.

Mr. Croll: We let everything stand which you asked to have stand. Let us get on.

Mr. Gillis: There is a sound reason for me asking that a section stand but I do not think there is such a reason in this case.

Mr. Smith: That is an amazing distinction which you draw.

Mr. Gillis: I think myself the situation is well worded for this reason—

Mr. Smith: I will vote for it.

Mr. Gillis: In (*a*) it provides for any shipping that is Canada wide.

Mr. Johnston: It provides more than that.

Mr. Gillis: It provides the department with the power, if it wishes to exercise it, to include in this act any industry that ramifies from province to province. That is effective in (*a*). Now my interpretation of (*c*)—

Mr. Smith: They could not do what you suggest.

Mr. Gillis: Yes, they could. Ships that work out of British Columbia come within the jurisdiction of the provincial government and they are covered by their own provincial acts. If the provincial government in British Columbia decides to scrap their own act and accept this as their over-all code in the province, automatically the ships which you have in mind would come within this act. In (*h*) I think the whole thing is covered by "any work, undertaking or business outside the exclusive legislative authority of the legislature of any province". It is my opinion, the wording of the section indicates that he drafters had in mind the provision for taking over industries that ramified from province to province leaving alone the ones covered by provincial acts.

Mr. Smith: As a matter of fact I do not think that (*h*) means anything but we will not argue about that.

Mr. Johnston: I am not arguing one way or the other but it does seem to me that in (*a*) there is confusion when you read the words "by ship anywhere in Canada". I think there is confusion there and I suggest the committee do let this section stand and the steering committee or the legal department should take the matter into consideration. I think they should also consider the point made by Mr. Smith which is the most practical point made so far.

The Chairman: Shall the section stand?

Stand.

Section 54.

> 54. Part I of this Act shall apply in respect of any corporation established to perform any function or duty on behalf of the Government of Canada and in respect of employees of such corporation, except any such corporation, and the employees thereof, that the Governor in Council, excludes from the provisions of Part I.

Mr. Croll: I do not think this is a good section. I see no reason why the Governor in Council should have the right to exempt Crown companies, and he will have the right to exempt them. I think this leaves itself open to further objection. I have heard a great deal of talk in the House about the imposition of taxes by radio. What we do here is actually to give the Governor in Council—not parliament but the Governor in Council—an opportunity to nullify the whole act. He might say tomorrow that shipping does not come within the act. We will find ourselves out of labour legislation by television one of these days. I think we should decide whether the act should or should not apply and I think it should not be left to the Governor in Council. It is too serious a matter to be left to anyone but parliament, and I think this is a bad section. I do not know why it should not be deleted but let us hear from the department. As far as I am concerned it can be deleted, and I point out the objections.

Mr. Lockhart: Could we have an explanation from the board?

Mr. MacNamara: The reason for the over-riding provision that the Governor in Council can make the exception lies in this fact. Crown corporations are children of the war if you would call them that. There was a little dubiousness on the part of the government to put collective bargaining in all types of Crown corporations, particularly those which might have involved the production of material of war. This is a protection in case the plan does not work or in the case of an emergency. That is the explanation of why it is left to the Governor in Council. There are a lot of different types of Crown corporations which have come into being and which were coming into being when this section was drafted.

Mr. Adamson: This would cover the employees of Chalk River?

Mr. MacNamara: Yes.

Mr. Timmins: Not necessarily.

The Chairman: Is the section carried?

Mr. MacInnis: If you will turn to section 3 you will find there that an employee has the right to be a member of a trade union and to participate in the activities thereof. Now if you are going to have this section in you are deciding that employees have only a right to be organized into trade unions within such organizations as the government of Canada sees fit. That would take in the right to organize in Crown companies. While Crown companies may be doing and are doing all kinds of work I think we should consider this very carefully before we approve.

Mr. Croll: Let the section stand.

The Chairman: Shall the section stand?

Mr. Smith: Before you let the section stand I would point out all this says is that the government has not the right to take bargaining power away from anyone except Crown corporations. That is all the section says, and it is not going to hurt anybody very much.

Mr. Johnston: Does it not go further than that?

Mr. Smith: No, that is all it says. The point which we must make up our minds is whether we are in favour of the government saying it does not want the ordinary labour laws to apply in certain projects of one kind and another. I do not suppose they are thinking of the post office for instance, but what they seek is the right to say that in their own corporations this act shall not apply.

Mr. Gillis: I think that is the very thing that should not be said.

Mr. Smith: That is the only point.

Mr. Gillis: It is a rather peculiar twist for the government to take. The government frames an act and makes acceptance of it obligatory on the part of every company, organization, and industry, except those under their own management. They are here giving power to the Governor-in-Council to exclude Crown companies from the obligations we are laying down. I think myself the government itself should be the first to set an example for other corporations by setting up a reasonable and fair collective bargaining standard in their own organization. I visualize a lot more Crown companies in the future than are now in existence—and the fact of the matter is the government is taking over some private enterprises which have failed.

Mr. Smith: That is what governments are for.

Mr. Gillis: You are quite right. If they are going to take the stand that the post office employees should be free to join a union of their own choice, then other employees in a government corporation should likewise be free. I think if we read this section into the bill we are defeating the purpose of the bill. We are saying to persons outside that the government wants them to accept this act as law but the government is not prepared to enforce it within it own organization. I suggest the clause should be thrown out and that government employees, Crown corporation employees, civil servants and so on, have the legitimate right as free citizens to have bargaining arrangements with their employers to ensure proper standards of living for their families.

The Chairman: Shall the section stand?
Stand.

Section 55?
Stand.

Mr. Croll: The next section is a pretty difficult one and I would move that we adjourn.

The meeting adjourned to meet Thursday, May 13, 1948.

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Committee on, 1947/48
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SESSION 1947-48
HOUSE OF COMMONS

STANDING COMMITTEE

ON

INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE

ca reports

No. 6

Bill No. 195—The Industrial Relations and Disputes Investigation Act

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THURSDAY, MAY 13, 1948

WITNESS:

Mr. A. H. Brown, Chief Executive Officer and Solicitor, Department of Labour, Ottawa.

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MINUTES OF PROCEEDINGS

THURSDAY, 13th May, 1948.

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. The Chairman, Mr. P. E. Cote, presided.

Members present: Messrs. Adamson, Archibald, Black (*Cumberland*), Bourget, Case, Charlton, Cote (*Verdun*), Croll, Dechene, Dickey, Gauthier (*Nipissing*), Gillis, Gingues, Hamel, Johnston, Knowles, Lapalme, Lockhart, MacInnis, McIvor, Maloney, Merritt, Mitchell, Pouliot, Sinclair (*Vancouver North*), Skey, Timmins.

In attendance: Mr. A. MacNamara, Deputy Minister, Mr. A. H. Brown, Chief Executive Officer and Solicitor, and Mr. M. M. MacLean, Department of Labour, Ottawa.

Copies of the following were distributed to members:

(1) Memorandum, dated April 17, 1948, on Bill 195, Ontario Mining Association;
(2) Report on the Industrial Relations and Disputes Investigation Act, 1947, Nova Scotia Committee on the Canadian Bar Association;
(3) Report, dated January, 1948, of Committee on Industrial Relations and Labour Law, B.C. Section, Canadian Bar Association;
(4) Submission on Bill 338, undated, by the Ontario Committee on Industrial Relations and Labour Law, Canadian Bar Association;
(5) Submission, dated 1st May, 1948, Shipowners Association (Deep Sea) of British Columbia;
(6) Letter dated 7th May, Northern Electric Engineering Employee Association, Montreal.

On motion of Mr. Dickey, the Second Report of the Steering Committee was concurred in.

The Committee resumed consideration of Bill No. 195.

Mr. A. H. Brown was called and questioned.

Clause 56
Carried.

Clause 57
Carried.

Clause 58
Carried.

Clause 59
Carried.

Clause 60
Carried.

Clause 61
Carried.

Clause 62
Carried.

Clause 63
Carried.

Clause 64
Carried.

Clause 65
Carried.

Clause 66
Carried.

Clause 67
Stand.

Clause 68
Carried.

Clause 69
Carried.

Clause 70
Carried.

Clause 71
Carried.

Clause 72
Carried.

Clause 73
Carried.

Clause 74
Carried.

The Committee reverted to the consideration of *Clause 2* (i).
(i) (i) carried.

Mr. MacInnis moved, that subclause (ii) thereof be deleted.

And the question being put, it was, on division, resolved in the negative.

Mr. Adamson moved that the following be added thereto as a new subclause:

> Where a number of professional persons working for a single employer so wish they may form a professional association empowered to bargain collectively with their employer.

The Committee adjourned at 1.00 o'clock p.m. to meet again Tuesday, 18th May, at 10.30 o'clock a.m.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
May 13, 1948.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Chairman, Mr. Paul E. Cote, presided.

The CHAIRMAN: Gentlemen, we have this morning distributed copies of the following: (1), a memorandum on Bill 195 from the Ontario Mining Association; (2), report on the Industrial Relations and Disputes Investigation Act by the Nova Scotia Committee of the Canadian Bar Association; (3), report of Committee on Industrial Relations and Labour Law, British Columbia section of the Canadian Bar Association; (4), submission of the Ontario Committee on Industrial Relations and Labour Law, Canadian Bar Association; (5) submission dated May 1 from the Shipowners Association, (Deep Sea) of British Columbia; (6) letter dated May 7 from the Northern Electric Engineering employee Association, Montreal.

I wish to point out there has been an unavoidable delay in the distribution of these briefs due to the fact we had to prepare the mimeographed copies ourselves. We received only the original copy of these submissions.

Mr. MACINNIS: In so far as it applies to the submission by the Bar Association, I do not think it matters because the submissions are on Bill 338. They are only a year late, anyway.

Mr. CROLL: They have given it a little thought.

The CHAIRMAN: Gentlemen, we come next to the consideration of the second report of the steering committee. At the last meeting, you received a copy of the steering committee's report, together with a copy of the appendix attached thereto. Are you ready to consider this report and to take action upon it. I need a motion for the adoption of the report.

Mr. DICKEY: I move the adoption of this report.

Mr. CASE: I second the motion.

The CHAIRMAN: Moved by Mr. Dickey and seconded by Mr. Case, that the report of the steering committee be concurred in. All in favour? Any contrary?

Carried.

Mr. Johnston, would you have any objection to allowing your motion concerning the sittings of the committee to stand for another meeting?

Mr. JOHNSTON: Let it stand for another meeting.

The CHAIRMAN: Now, we resume consideration of the bill. We are at section 56, industrial inquiries. As this is a lengthy section, I think we may have discussion on each subsection as I call it.

INDUSTRIAL INQUIRIES

Ministerial powers.

(1) The Minister may either upon application or of his own initiative, where he deems it expedient, make or cause to be made any inquiries he

> thinks fit regarding industrial matters, and may do such things as seem calculated to maintain or secure industrial peace and to promote conditions favourable to settlement of disputes.

Shall this subsection carry?

Mr. GILLIS: I wonder if the minister would mind explaining that? It is rather broad. He may do anything he deems fit and necessary. What I am thinking about now is that he could, under that section, order in the mounted police and the army.

Hon. Mr. MITCHELL: No, let me say this; we have heard a lot about prosecutions. I have always held the opinion that the labour department is not a police force and the department should deal specifically with conciliation. The responsibility for law and order commences with the chief magistrate of the city, and carries on to the Attorney-General of the province and then the Attorney-General of Canada.

I should like to say this to Mr. Gillis that that is a fairly old section. It has been kicking around since 1907. It was in the old I.D.A. Act.

Mr. GILLIS: I have seen it used and that is why I am objecting. I do not want the minister to be thin skinned about this thing.

Hon. Mr. MITCHELL: You could not be a minister of labour and be thin skinned.

Mr. GILLIS: The language in this section gives the minister unlimited power. I am not unmindful of the fact the power has been there since 1906. Three times in my lifetime in industrial disputes in the province from which I come, I have seen the army and cavalry called in, barbed wire and everything.

Hon. Mr. MITCHELL: But not under this section.

Mr. GILLIS: Somebody used those powers. All I want from the minister is the assurance there will be no repetition of the use of force to maintain industrial peace in this country.

Hon. Mr. MITCHELL: I hope I will never live to see the day when, under any rational government—

Mr. GILLIS: You mean we were under irrational government at that time?

Hon. Mr. MITCHELL: —when under any rational government the labour department will be the police department.

Mr. GILLIS: I hope not.

The CHAIRMAN: Shall this subsection carry?
Carried.

Subsection (2). Shall this subsection carry?
Carried.

Subsection (3). Shall this subsection carry?
Carried.

Subsection (4). Shall this subsection carry?
Carried.

Subsection (5). Shall this subsection carry?
Carried.

Subsection (6). Shall this subsection carry?
Carried.

Shall section 56 carry?
Carried.

Section 57. Shall this section carry?
Carried.

Section 58. Shall this section carry?
Carried.

Section 59.

Delegation of powers. R.S., c. 99

59. Subject to regulation, the Board may by order authorize any person or board to exercise or perform all or any of its powers or duties under this Act relating to any particular matter and a person or board so authorized shall with respect to such matter have the powers of commissioners under Part I of the *Inquiries Act.*

Mr. GILLIS: Would the minister mind explaining that section?

Hon. Mr. MITCHELL: That takes in the Northwest Territories and places such as that which are a long way from home.

Mr. GILLIS: If it is necessary to send a board up there, then the minister could delegate them powers.

Hon. Mr. MITCHELL: Yes, that is the only reason for it.

The CHAIRMAN: Shall this section carry?
Carried.

Section 60.

Procedure rules. Publication.

60. (1) The Board may, with the approval of the Governor in Council, make rules governing its procedure, including the fixing of a quorum of the Board, and, where an application for certification in respect of a unit has been refused, the time when a further application may be made in respect of the same unit by the same applicant.

(2) The rules of the Board shall have effect upon publication in the *Canada Gazette.*

Mr. LOCKHART: Should there be any time specified in this section? It might be held up for a long time. Could not the words, "As soon as possible", be inserted?

Mr. MACINNIS: I agree with Mr. Lockhart. I do not understand why a time limit has not been put in that section. There may be a satisfactory explanation. There is a time limit in some similar parts of the Act, is there not?

Mr. LOCKHART: It should be, "As soon as possible".

Mr. BROWN: This provision concerning the fixing of a further time limit is to prevent a multiplicity of applications. Where an application for certification has been made, dealt with by the board and has been rejected, the thought is the board should be given authority to fix a further time saying that a new application may not be made to the board within this time limit. Otherwise, you are going to have a continued process of agitation in a plant with respect to activities in support of a new application.

The board, under the wartime labour relations regulation has fixed a minimum period of time of six months. If an application has been dealt with by the board and rejected, then a new application is usually made and permitted six months later.

Mr. TIMMINS: Mr. Brown, if you were prescribing rules, you would probably put a six months' limit in the rules.

Hon. Mr. MITCHELL: What happens is this; the place is in a turmoil, this agitation continues; there might possibly be a demand for a vote two weeks after bargaining rights have been given to a certain body. In the early days of the Wagner Act of the United States, that is what happened. Later, a principle was established that there should not be another vote for six months.

Mr. MacInnis: This applies to an application which has been refused not to an application which has been granted, so I do not think the point made by the minister applies. What happens here is, if the application has been refused there is no certified organization for these employees. It is important that the time be limited in which the employees of an organization should be without a bargaining agent. It should be made as short as possible.

Hon. Mr. Mitchell: I should have added this, but it slipped my memory. It may be an application by an organization to supplant the existing bargaining agent.

Mr. MacInnis: Not under this section, so far as I can see.

> The board may, with the approval of the Governor in Council, make rules governing its procedure, including the fixing of a quorum of the board, and, where an application for certification in respect of a unit has been refused, the time when a further application may be made in respect of the same unit by the same applicant.

It seems to me that section does not prevent an application being made by a different bargaining agent in respect of the same unit. If the applicant is new, an application can be made at any time. It is not limited.

Hon. Mr. Mitchell: That is right.

Mr. Gillis: Mr. Chairman, as I see that clause, I think it is all right. It is open and it is flexible. It means this; where an application has been made for certification, the board tries the case and finds the applicant cannot meet the requirements contained in the Act, perhaps due to the fact they have not got a majority. The organizer of that unit can go back and continue organizational work. It may be a week or it may be two months or six months, but if you state definitely six months, it is inflexible. It may hold back the unit which is able to build up the organization within two or three weeks and go back to the board.

Mr. Case: Then, if someone else appeared claiming to have bargaining rights, an application could be made immediately.

Mr. Croll: What is the time limit now, Mr. Brown?

Mr. Brown: Ordinarily speaking, if the application has been dealt with on its merits, the usual period of time specified is six months; that holds true for both the national board and the Ontario board. I think it is a fairly good period of time. It has worked out satisfactorily. There have not been any complaints from the trade unions, themselves, as to that period.

Mr. Merritt: There have been several recommendations that there should be an amendment to section 60 providing that the proceedings before the board be open to the public and the report of the decision of the board should be announced publicly. I should like to ask one of the officers of the department what the practice is now. Are the proceedings open to the public?

Mr. Brown: Yes, all hearings are open to the public.

Mr. Merritt: And the decision of the board is publicly announced and appears in the *Labour Gazette,* does it?

Mr. Brown: Yes.

Mr. Merritt: So a provision such as that would be unnecessary. You would not meet to give the public the right to attend because that right is in existence now, is that correct?

Mr. Brown: That is correct.

Mr. LOCKHART: Have there been any complaints along that line?

Hon. Mr. MITCHELL: I know of none.

The CHAIRMAN: Shall the section carry?

Carried.

Section 61, powers of board.

POWERS OF BOARD

Decisions final and conclusive. Reconsider, vary or revoke.

61. (1) If in any proceeding before the Board a question arises under this Act as to whether

(*a*) a person is an employer or employee;

(*b*) an organization or association is an employees' organization or a trade union;

(*c*) in any case a collective agreement has been entered into and the terms thereof and the persons who are parties to or are bound by the collective agreement or on whose behalf the collective agreement was entered into;

(*d*) a collective agreement is by its terms in full force and effect;

(*e*) any party to collective bargaining has failed to comply with paragraph (*a*) of section fourteen or with paragraph (*a*) of section fifteen of this Act;

(*f*) a group of employees is a unit appropriate for collective bargaining;

(*g*) an employee belongs to a craft or group exercising technical skills; or

(*h*) a person is a member in good standing of a trade union;

the Board shall decide the question and its decision shall be final and conclusive for all the purposes of this Act.

(2) A decision or order of the Board is final and conclusive and not open to question, or review, but the Board may, if it considers it advisable so to do, reconsider any decision or order made by it under this Act, and may vary or revoke any decision or order made by it under this Act.

Mr. CROLL: Mr. Chairman, I have one suggestion to make with respect to this section. I believe this section corresponds to section 21 of P.C. 1003 where the words, "final and conclusive" appear. Now, there are two points of view, either the decision of the board is final and conclusive or there should be permission given to take the matter before a board or court.

Up to this time, the board has always considered its decisions to be final and conclusive, but that is not quite right. I have here the case of the Canadian Fishermen's Union versus the owners of the *Sea Nympth* which was decided by the Supreme Court of Nova Scotia in 1946. It appeared that the board made a decision which was final and conclusive but that decision was reversed by the Supreme Court of Nova Scotia at that time.

I am neither in one corner or the other corner at the moment. I am satisfied to have it final and conclusive, but I think the words should be added that it is not open to review by any court or any other body. If it is to be open to review, it should be stated that it is open to review. At the present time the words do not go far enough and are not considered to be final and conclusive. It seems to me, in the light of that decision we ought to re-draft the section in order to make it stick or open the door and let the parties go to the courts if they so desire. I point out that, at the moment, it does not mean what it says.

Hon. Mr. Mitchell: I remember that case very vividly. It was not a question of the interpretation of the Act as such, it was a question of jurisdiction. I think that is more or less down the drain at the moment until the B.N.A. Act is amended. What we did with this clause was to make it just as flexible as we possibly could.

Now, I do not know whether you should deny anyone the right to go to the court if he feels unjustly treated. I would not like to do it myself. It is just as flexible as we can make it. It did give power to review a decision already made.

Mr. Croll: The question there was whether the crew of a fishing vessel who shared in the proceeds of the catch were employes. That was the question. It was not a question of jurisdiction. That was the question to be decided, and the Supreme Court of Nova Scotia reversed them. My point is that it is either final or not final. I agree entirely they should have the right to go to the courts but let us say so, either give them the right or close the door. At the moment they have the right to go despite the fact we say "final and conclusive." There is a decision of the Supreme Court of Nova Scotia which is final. I agree with it. I am quite content with it, but this does not mean final and conclusive.

Hon. Mr. Mitchell: They did not go to the courts on the terms, rather on a technicality.

Mr. Croll: The question of employees.

Hon. Mr. Mitchell: That was the only reference to the court. It was not a bargaining agreement.

Mr. Croll: The question was whether they were or were not employees. If they were employees they could not share. If they were not employees then they were partners.

Mr. Lockhart: I am in agreement with Mr. Croll there, but I wonder if the minister can say why the right to go to any other judicial body should be denied. Would it not be democratic to put something of that kind in?

Hon. Mr. Mitchell: This is about as tight as you can make it. That is the opinion of the Department of Justice, and any additional language would not add anything to the section. When I mentioned jurisdiction I used jurisdiction in the sense it is used in labour organizations. Under the decision of the Supreme Court of Nova Scotia they said that these people were not employees, that they were actually operators. That is how that came up.

Mr. Johnston: Do the last two lines of this not make it very decisive? "The board shall decide the question and its decision shall be final and conclusive," and so on.

Mr. Croll: Those were the exact words in the other section.

Mr. Timmins: In the brief of the Nova Scotia committee of the Canadian Bar Association they submit a recommendation in respect of this particular section. Perhaps I might read it.

> It is felt that the board's decision should not be final and binding on either questions of law or on questions of the jurisdiction of the board.

Then they give reasons.

> These matters should be left to the courts of the land, as they are in the Workmen's Compensation Acts and Public Utilities Acts and the Act should provide for submission of questions of law to the courts, and the jurisdiction of the board must be subject to review by the courts.

I am putting that forward as a submission, that perhaps it is something we ought to consider before we finally pass the section.

Mr. Gillis: Mr. Chairman, what we are trying to do now is to enact a law, a completely different law from your Criminal Code. I do not think you will ever have satisfaction in labour relations until you get yourself out of the courts. I agree with Mr. Croll. I think myself the Supreme Court of Nova Scotia erred in their judgment when they reversed the decision of the National War Labour Board. They are human beings also.

Mr. Croll: In that court.

Mr. Gillis: Yes, and they can be wrong. I remember that case very well. I think the minister is right also when he says it was a matter of jurisdiction. You still have your nine provinces functioning and everybody wanting to hang on to their jurisdictional rights. When the National War Labour Board made its decision based on the language of 1003 I submit their decision was final, binding and conclusive. I think the Nova Scotia Supreme Court was absolutely wrong when they did not accept that decision in that particular case until such time as 1003 was either revoked or changed. They went outside of a national law that was enacted in an emergency to take care of labour relations. That was an unfortunate case in that it gave them an opportunity to quibble with the law as it was on the question of the meaning of the word "employee."

The language contained in this section of the bill is all right as far as I am concerned, provided the people in this country want to live up to the law as enacted. If this is to be a national code and a guide for the future in labour relations I think we have got to begin to make people in this country understand that we are trying to bring about uniformity, we are trying to set up one jurisprudence, and that labour relations are human relations, and they cannot be adopted to the kind of laws you have in the criminal code where people are prosecuted as criminals.

This whole legislation is designed to expand democracy and give responsibility not only to the employer but to the employee. I think unless we are clear and definite in the language we use we are going to defeat our own purpose. I am quite satisfied that if this is left as it is drafted, and respected as a new law in this country, that there will be no difficulty with it.

When I was listening to the chairman reading the section and following him it seemed to me that it also brings in your 1,100 engineers in the province of Ontario who now have collective agreements. The board has a right to make a decision there, whether or not we write in the engineers. A collective agreement still exists. Personally I am quite satisfied to give this a trial as is with the understanding that the board has the final say in determining questions at issue under this particular Act.

Mr. Croll: That is not the point. There are no more telling words than the word "final", "this is final, this is conclusive." I understand by that that is the end of it. That is what it says. In spite of that a court has said that the words "final and conclusive" do not mean final and conclusive. In view of that let us say that it shall be final and conclusive and not subject to review by any court or the minister, or say that it shall be subject to review by courts or the minister, one or the other, but let us put it into one or the other of those categories. It does not mean what it says. The words may mean that to you but they do not mean that to the people who interpret the law. We write the law; we do not interpret it. If we want it interpreted as we think it ought to be interpreted let us say so. Let us say it is not subject to review by anyone or it is subject to review.

Mr. Johnston: That is what it does say.

Mr. Croll: The courts have said it does not mean that.

Mr. Johnston: How will you make it any stronger?

Mr. Dickey: I think that we have got to remember that this is labour legislation. I think this section goes as far and expresses the thing as completely as it can be done in this Act, but we have got to remember that a question of the jurisdiction of the court cannot be found within the confines of this Act, that as long as our system of law remains as it is under our present organization the jurisdiction of the courts will be found in other legislation, and they have a certain inherent jurisdiction that this kind of legislation cannot affect.

Mr. KNOWLES: May I say a word in support of Mr. Croll's contention that the wording of the Act does not make it mean what it seems to say. At the moment I am not participating in the argument as to what it should convey. I draw attention to the fact that the wording in P.C. 1003 at least in its preamble was a little different. It said:—

> If a question arises under these regulations as to whether

so and so is the case,

> the board shall make a decision and its decision shall be final.

In section 61 (1) we see these words:—

> If in any proceeding before the board a question arises under this Act

and so on. I submit it would be possible for a court to say that the decision of the board on these matters is final only with respect to proceedings before the board. In other words I contend the wording—

Mr. MACINNIS: Read subsection (2).

Mr. KNOWLES: But I contend that the wording with reference to a proceeding before the board would leave it open to the court to say that the final decision referred only to proceedings before the board, and as Mr. Dickey has pointed out does not obligate the courts to pay attention to that restriction.

Mr. LOCKHART: Mr. Chairman, I am somewhat in agreement with what Mr. Croll has said. After I sit down could some of the officers or the minister indicate whether there have not been cases where the men felt that the matter should be reviewed again, and felt that perhaps a final decision by the board may not just give all the freedom of decision that some small union groups think should be exercised. Could someone answer that question as to whether or not there have not been cases of that kind over the years? Could we not make it doubly sure that in the event of some jurisdictional ruling the men would feel that they would still have the opportunity of having their case reviewed by judicial bodies? I am inclined, as I say, to agree with Mr. Croll, but I think we ought to ponder seriously that aspect of it. I am not objecting. If it means definitely one thing all right, but there is a little ambiguity and that is what I should like to point out.

Mr. MACINNIS: As far as the ordinary layman is concerned I do not think there is any ambiguity in the section. At least, it is quite clear as far as I am concerned.

> A decision or order of the board,

and in my opinion this does not apply to a matter of procedure—

> is final and conclusive and not open to question, or review,

and so on. I take that to mean by an outside body. I have great regard for the point made by Mr. Croll that it was not sufficient in the Nova Scotia case. The board decides as to whether a person is an employer or employee. I think that was the point the Nova Scotia case rested on.

Mr. CROLL: That is right.

Mr. MACINNIS: Is there any objection to putting in the words suggested by Mr. Croll, "not open to question or review by any court or by the minister"? I would prefer in a matter of this kind to leave the question wholly in the hands of the board, because they are dealing with a question where they have been appointed specifically to represent both parties to the dispute. In any case, a court decision is no more final than the board's decision except there is a finality of courts. The last court that has dealt with the matter has, of course, the final say, but there is no saying if there was another court to which it could be referred what would be the decision of that court because each court may change the decision, and very often do change decisions made by the court below. I have seen cases where it was a see-saw. When the case was heard in the county court it was one decision, but when it was heard in the appeal court of the province there was another decision. When it went to the Supreme Court of Canada there was another decision, and when it went to the Privy Council it came back to the decision made by the county court. That is the situation. There is no finality except the finality of the last court. I think we would be well advised to make this power of the board as conclusive as possible so as to leave the matter in the jurisdiction of the board. If there is no legal objection to putting in the words, "by any court or by the minister" I think we should do that.

Hon. Mr. MITCHELL: Can you do that? We are talking so much about courts here. I think it is a fair thing to say that the Canadian industrial structure in the broader sense, employers and employees, has stayed away from the courts to a large degree, much greater than in the United States. Suppose it is a question of constitutionality.

Mr. MACINNIS: Constitutionally it is what the Act contains.

Mr. TIMMINS: You cannot take away anything that is inherent.

Hon. Mr. MITCHELL: That is right. The reason why we did not challenge the Nova Scotia case—and I think I can say this to the committee—was because normally that industry was under the jurisdiction of the government of the province of Nova Scotia.

Mr. LOCKHART: Are there any other such cases?

Hon. Mr. MITCHELL: I do not know of any others. We were just handing the jurisdiction back at that time, and no action was taken. The Department of Justice has told us that this section is about as water-tight as it possibly can be made. I should like to point out to the committee that it is not expected that there will be an appeal to the courts on every decision made by this board. I have got enough reliance on the common sense of our people that they would not do that kind of thing. You have a board which is representative of employers and employees with an impartial chairman, and up to now, as far as my board is concerned—and I have handled enough cases—we have had no difficulty except in this one case Mr. Croll speaks of.

Mr. ARCHIBALD: As I understand the situation when Bill 195 is passed it becomes an Act. Therefore it is a law and as a law is subject to the courts of the country. I do not think you can write into it anything that will take away from that. As the minister has pointed out it boils down to the good sense of the parties involved because this is the law and therefore it is subject to the courts.

Mr. LOCKHART: Can someone tell me if there is any provision within the Workmen's Compensation Act? I gather there is, and if there is could some similar provision be made in this Act as is made in the Workmen's Compensation Act?

Hon. Mr. MITCHELL: Speaking from memory I think the only province where you have that right is the province of Saskatchewan. There may be a change. I have not been close enough to it. There is no appeal against a decision of the Workmen's Compensation Board in other provinces, I believe.

Mr. MACINNIS: There is no appeal against a decision of the compensation board in the province of British Columbia.

Mr. CROLL: There is none in Ontario.

Mr. CASE: The question I should like to settle in my mind is whether the war labour board ruled specifically on the partnership employee question, or was that left for reference to the court?

Mr. Croll: No.

Mr. Case: Because there have been no other appeals.

Hon. Mr. Mitchell: The board ruled in the first place.

Mr. Croll: I believe that most people are under the impression this will not go to the courts, but here is the danger. A similar case may arise in the province of Ontario as to the question of what is an employee. You are bound to have it arise on the question of engineers on which this committee will divide I do not know how. Immediately a lawyer appearing in such a case will quote the Supreme Court case in the province of Nova Scotia and will point out that there was no appeal taken from it. He will say, "There is the only authority there is on the point." The courts are then in the position to give it a great deal of weight. Maybe they will decide it was not good law or they should not have interfered, but they would give it a great deal of weight. You have a precedent. As the minister pointed out it happened at a very unfortunate time when he was turning over the jurisdiction, and he was not much interested, and it did not appear to be dangerous, but nevertheless we are faced with it. We hope that this will become a uniform code across the country, but we are faced with that decision. That decision means that we will be thrown out in every court in the country where either an employer or employee, whoever is aggrieved, wants to appear before a court. If you can put words in here which can carry out the full intention by saying it shall not be subject to review by a court or by the minister, or that it shall be, whichever way the committee decides, then I think you have indicated to the country generally and to the people who are interested what you mean.

Mr. Brown: Mr. Chairman, the provisions that are in P.C. 1003, to which Mr. Croll referred, have been strengthened in this respect by the provisions of subsection (2) of section 61 which say:

> A decision or order of the board is final and conclusive and not open to question or review.

and so on. Those particular words were not in P.C. 1003. It certainly was the intention in drafting this section to provide that the decision of the board would be final and binding, and would not be subject to review by a court. Of course, you never can exclude the power of a court to review a case where jurisdiction is involved. They can always do that on a question of certiorari no matter what you say they cannot do.

It was the intention within those limits to provide that the decision of the board would be final and binding, and in drafting it it was felt this language was just as conclusive as you could have it, and even if you did go on from there and say something further about not being open to review by a court actually as far as the language is concerned you would not be adding anything to what is there. That is the situation and purpose in drafting the legislation. I do think you have added something by subsection (2).

The Chairman: Are you ready for the question? Is section 61 carried?

Carried.

Section 62. "Where uniform provincial legislation. Agreements for administration by Canada."

Is section 62 carried?

Carried.

Section 63. "Where powers or duties conferred on minister or dominion officers by provincial legislation."

Is the section carried?

Carried.

Section 64. Shall the section carry?
Carried.

Section 65. Shall the section carry?
Carried.

Section 66. Shall the section carry?
Carried.

Section 67.

REGULATIONS

G. in C. regulations. Publication. Laid before Parliament.

67. (1) The Governor in Council may make regulations
(*a*) as to the time within which anything authorized by this Act shall be done;
(*b*) excluding an employer or employee or any class of employers or employees from the provisions of Part I of this Act or any of the provisions thereof; and
(*c*) generally for carrying any of the purposes or provisions of this Act into effect.

(2) Regulations made under this section shall go into force on the day of the publication thereof in the *Canada Gazete,* and they shall be laid before Parliament within fifteen days after such publication, or, if Parliament is not then in session, within fifteen days after the opening of the next session thereof.

Mr. CROLL: Mr. Chairman, in connection with (*b*) we have not actually settled on that because we allowed one of the other sections to stand. I think that is giving far too much power to the Governor in Council. I raised the point before that there should not be the right to exclude anyone from the Act. Once the Act covers them, they ought to stay covered by the Act. Otherwise you may find, from time to time, certain people excluded whom we thought to be included in the Act. I am opposed to subsection (*b*) as it stands at the present time. I think we ought to let that section stand and when we deal with this other section, we can decide on it. I would ask that this section stand until we do that.

Mr. MACINNIS: I would support Mr. Croll. I was going to get to my feet when he rose.

Mr. GILLIS: I do, also, for the same reason.

Mr. MACINNIS: I think it is giving the minister to wide powers. I believe it is making trouble for the minister, himself. He will be pressured, if I may use that term, by persons who want to be excluded from this Act.

The CHAIRMAN: Shall the section stand?

The section stands.

Section 68. Shall this section carry?
Carried.

Section 69. Shall this section carry?
Carried.

Section 70. Shall this section carry?
Carried.

Section 71. Shall this section carry?
Carried.

Mr. CASE: Just one question at this point. If the provinces agreed to accept this code, would those fines still be payable to the Receiver General?

Hon. Mr. MITCHELL: The provinces will take care of that; you do not need to worry about the provinces.

The CHAIRMAN: Section 72, subsection (1). Shall the subsection carry?
Carried.

Subsection (2). Shall the subsection carry?
Carried.

Subsection (3). Shall the subsection carry?
Carried.

Section 73. Shall the section carry?
Carried.

Section 74. Shall the section carry?
Carried.

Now, gentlemen, we revert to section 2 of the bill, clause (i).

> "Employee" means a person employed to do skilled or unskilled manual, clerical or technical work, but does not include
>
> (1) a manager or superintendent or any other person who, in the opinion of the board, exercises management functions or is employed in a confidential capacity in matters relating to labour relations.

I think we should stop there and have a discussion on this first part. Is that agreeable to the committee?
Agreed.

Shall Clause (i) (1) carry?

Mr. GILLIS: Is this not the one under which we are excluding the engineer?

Mr. CROLL: No, it is clause (2).

The CHAIRMAN: Shall this clause carry?
Carried.

> (2) a member of the medical, dental, architectural, engineering or legal profession qualified to practise under the laws of a province and employed in that capacity.

Mr. McIVOR: I think we have all had a good many letters and requests concerning this clause. I have had a few. I believe the engineers, like the lawyers and doctors, like to be called professional men. The weight of the evidence points in that direction; that is what they want.

Mr. GILLIS: I should like to say a word on this section, Mr. Chairman. The steering committee had a long discussion on this matter and the weight of evidence, according to the information we had at that time would make appear that the engineers do not want to be included for bargaining purposes. I am not satisfied that the weight of evidence is in that direction for this reason; there are two classifications of engineers. Most of the telegrams and briefs which were received came from the Engineering Institute. Now, most of the people, in my opinion, who would sit on the executive council of the Engineering Institute, rather than being employees would be employers. Most of the engineers in that position would be in the managerial class rather than in the employee class. When an executive council, on that basis, makes a decision so far as I am concerned, it would not carry much weight. I would say it does not express the opinion of the rank and file of the engineers.

On the other hand, there was proof given to the steering committee that there are at the present time in Canada, some 1,100 employee engineers who now have collective agreements as employees. These agreements were secured under P.C. 1003. Now, if we leave the engineering profession out we are going to scrap these collective agreements which these men wanted and under which they secured benefits.

Mr. Merritt: Of these 1,100, how many of them are working for companies or in occupations which fall under the Dominion Act?

Mr. Gillis: That fall under the Dominion Act?

Mr. Merritt: Yes.

Mr. Gillis: I would say, so far as Ontario is concerned and that is where most of them are, they all fall under the Act.

Mr. Timmins: The information I have is that there are 500 with the Hydro in Ontario. There is also an agreement with The Bell Telephone Company, the Canadian National Telegraphs and an agreement with the C.B.C. At the present time, these people are all operating under agreements.

Mr. Gillis: Since the province of Ontario has accepted this code, these people will all be included. If we exclude the engineers as such from this particular Act, they would lose their collective agreements.

I believe as matters stood under P.C. 1003, it was not obligatory for those in the engineering profession to set themselves up as a bargaining unit. The ones who are now saying the engineers should not come under this particular bill never did come in under P.C. 1003; they stayed out. Nevertheless, if we do not include the engineers now in this bill, we are going to deal out some 1,100 employees, learned in the engineering profession who now have collective agreements.

If those who stayed out still wish to say out, they have that right. They do not have to come in; it is not obligatory under this particular legislation. However, it is necessary for us to include the engineering profession in order to protect the 1,100 who now have collective agreements. So far as I am concerned I think it is only fair and reasonable that we should include the engineering profession in this Act to protect those who now come under the Act very definitely, with the understanding that those who do not want to come in do not have to come in. They can continue in the way they did under P.C. 1003.

Mr. Skey: Does not the point in question come down to this; will those employees who wish to continue these agreements be altogether excluded from the benefit of this Act or can they have the benefit of this Act by reorganizing in another union, not calling themselves engineers? I should like to put that question to the minister and his assistant, if I have made myself clear, because I think if those men who wish to have the benefit of the Act can be protected and the 88·5 per cent who represent the associations and wish the engineers to be classed as a professional body could have their wishes at the same time, we would solve the difficulty. Have I made myself clear?

Hon. Mr. Mitchell: If they are employed as professional engineers they are out.

Mr. Gillis: And the company would define that.

Hon. Mr. Mitchell: No, the board would define that.

Mr. Knowles: No matter what name he calls himself.

Mr. Skey: Would a man have to resign from his professional association?

Hon. Mr. Mitchell: I would not like to go that far. I am not a great believer in hypothetical cases. I think there is enough commonsense and good judgment among the members of the labour board to decide the thing in a rational manner. They have done it up until now and I think they will continue to do it.

I want to say this while I am speaking about the board: the average life of a chairman of a board in the United States is about five months. We have not changed ours at all. We have not changed the membership. I think one member resigned.

Mr. CROLL: May I say that I think the answer lies with the engineers themselves. If they do not want to go to the board for purposes of certification, there is no obligation upon them to do so. Those who want to go to the board, and they have had that privilege since 1944, in my opinion, ought not to be deprived of the right to go before the board.

Mr. Timmins read a short list of those who had collective bargaining agreements. I think I can add a few names to that. I believe he mentioned there was a bargaining agreement and certification granted in the case of The Bell Telephone Company of Canada, both eastern and western divisions; Canadian National Telegraphs; Canadian Broadcasting Corporation; Algoma Steel Company; Canadian Bridge Company Limited; Toronto Hydro Electric System; A. V. Roe Company; Toronto Transportation Commission; the Corporation of the City of Hamilton; the Hydro Electric Power Commission of Ontario; the Canadian General Electric Company, a portion of it; and the Canadian General Electric Company, Peterboro plant. Now, those people all have collective agreements. It seems to have worked harmoniously. I do not think we ought to deprive them of it. It seems to me the purpose of the Act is to bring as many people as possible under the Act in the interests of good labour relations. We believe this code will do that.

Now, when we start excluding people from this Act and saying you cannot come in, that is a different thing from saying you may or you may not. As I said before, the matter lies entirely in the hands of the engineers. They do not have to go to the board and they do not have to bargain collectively, but those who feel their position requires it, in my opinion, ought not to be deprived of the right.

Mr. CASE: Do you accept the clause as it is?

Mr. CROLL: No, I want the word "engineer" out.

Mr. TIMMINS: I had a large number of communications from engineers asking that they be brought under the Act. I made it my business to see a number of engineers, some of them in the Hydro in the province of Ontario. I found there was a general feeling they wanted to be included. Some of them have had collective bargaining agreements since 1944. They feel it has worked well and they would like to come under the Act.

The minister has heard representations, no doubt—I may be wrong on this—from both sides. He has heard representations from the Engineering Institute and he has heard representations from the others. He has decided probably, he can correct me if I am wrong, there are more engineers who want to be kept out than there are engineers who want to be brought in. However, I do not believe the rest of us here have that knowledge. In fact I think, speaking for myself, probably there are more engineers who wish to come under the Act than there are engineers who wish to be excluded. I do not think we should exclude those engineers without having some first-hand knowledge in respect to the matter. I think we ought to hear what the minister or his deputy can tell us in that regard. Then, if we are not satisfied we can, perhaps, find some way of letting these people who have never had a chance to come before us, come before us and see whether they can convince us one way or the other.

Mr. **Adamson**: Perhaps I should say something about this since I happen to be one of those who worked at one time for the Hydro Electric Power Commission. There is a great deal in the contention of the engineers for this commission from whom representations have been received. I will just read you one paragraph, if I may, of their brief and it is this: this brief is signed by about eight or nine engineers, all members of the Institute who are employed by the Hydro.

> It s a well-known fact that, in the past, the salaries of engineers have been substantially below other professional groups and, for that matter, much less than many of the trade groups. Only through organized effort can we expect to maintain a standard for engineers. This, we believe, can be best accomplished for engineers who are employees performing professional engineering on a salary basis through the Federation of Employee-Professional Engineers and Assistants—our collective bargaining organization.

I shall not read you any more, but I think this brief makes it very clear. There is no question but that engineering is almost, I would say, the poorest paid profession of all. There is no question that by bargaining with his employer where there is a large group of employees, he has materially and substantially improved his position with regard to pay and other matters. Not only that, but the engineer has improved his professional position.

Now I believe, speaking as a professional engineer, I would be against the inclusion of engineers in the Act—I mean, I would be against taking the engineers out of the section—despite my own experience and the experience I have had working in the Hydro myself. It may sound like a contradition, but I believe there should be another clause added to this, a third clause, worded somewhat along these lines: where an employer employs a group of employees who have professional standing, they should be allowed to organize and bargain collectively with their employer. I suggest that as a way out of the impasse in which we are. As a professional engineer, personally, I would not like to see the engineers included in the general bargaining agreement. However, I do say, unless you get some machinery whereby engineers, as a group, where they are employed in large numbers by one employer, unless you get some machinery whereby these men can bargain together to protect themselves, you are going to relegate the engineer to an inferior position. I would be very much against that. It is for that reason I have made my suggestion.

I just want to say one thing more. I was talking to the Dean of Engineering of one of the largest universities. I shall not name him. He said, "If I had a son, I would certainly not send him into the engineering profession because it is the poorest paid."

Mr. **Gillis**: You are making a strong argument for a collective bargaining unit.

Mr. **Adamson**: As I have said, as a professional man, I would be against it if you took it out of this Act.

Mr. **Knowles**: May I just make one comment on the suggested third clause Mr. Adamson proposes? I would just say it would also cover lawyers working for a firm or doctors working for a hospital and dentists working for a clinic. I am not against that, but I am interested in hearing from the member who made the proposal.

May I come back to the situation before us? Is it not really quite simple and quite clear? With respect to the word "engineering" in this clause, if the word stays in the clause that means we arbitrarily state to those groups mentioned by Mr. Timmins and Mr. Croll who now have collective agreements that they can no longer have collective agreements.

Hon. Mr. Mitchell: May I break in at this point?

Mr. Knowles: Certainly.

Hon. Mr. Mitchell: There is nothing in this statute which prevents collective bargaining by anybody, but it is on the question of certification. There are lots of organizations in this country, trade unions, which are not certified and still bargain collectively with their employers.

Mr. Knowles: It puts them beyond the benefits of the provisions of this Act?

Hon. Mr. Mitchell: No.

Mr. Knowles: They would not be employees under this Act. While there might be protection for those presently enjoying collective agreements even, perchance, under section 72 (3), which we passed a few minutes ago, that protection would not be there for any similar group in the future. I appreciate the force of the interjection the minister made, but it does seem to me we run the risk of putting a barrier against certain engineers who want collective bargaining if we leave the word "engineering" in. If we remove the word, we leave the door open for those who want it and we do not force the engineers who do not want it into it.

Mr. Lockhart: Could we establish a principle here and make some progress? It seems to me if I sense the feeling of this committee we, perhaps, would want to have those engineerse who have collective agreements included in the Act. We could establish that principle first and then work out the phraseology to bring them within the Act.

Mr. Johnston: I should like to say a word in regard to what the minister said a minute ago, that the purpose of the Act is not to bar anybody. I think we are all of the opinion that is so, but I would point out to the minister that this question was reviewed very thoroughly by the steering committee. They were of the opinion, at least some of them, that if you leave that word "engineering" in the Act, then you do bar engineers from coming under this Act.

It is true that they could come under the Act as employees but there are 1,100 at least of the engineers who object to that feature. I can quite readily appreciate their objections. I think they want to retain their identity as engineers and still be allowed to come under this Act. Now, the very fact that the Act has been carrying on satisfactorily and allowing engineers to enjoy bargaining rights, I think is a good argument in itself, for excluding the word "engineering" from subsection (2). Such a move would leave the engineers in exactly the same position as they are now. As Mr. Gillis has pointed out there are 1,100 of them who are already under an agreement, and if you include the word "engineer" in the Act as it is now you would deprive those men of the right to bargain collectively under this Act. I do not think that is right. Somebody referred to doctors a moment ago. Personally I would have no objection to doctors obtaining collective agreements if they desired to. I would not have any objection to allowing lawyers to enter into a collective agreement if they themselves desire to.

Mr. Knowles: Some agreement.

Mr. Johnston: But I do believe it would be wrong to exclude a group of 1,100 men who are professional engineers from coming under this Act when they have definitely expressed a desire so to do. Therefore I am against having that word "engineer" appear in paragraph 2 of subsection (i) of section 2 of the Act.

Mr. Charlton: Is it not true that even if the word "engineer" is included in this paragraph 2 of subsection (i) that under section 8 of the Act it would be possible, at the discretion of the board, for them to take advantage of this legislation. Section 8 reads:

> Where a group of employees of an employer belong to a craft or group exercising technical skills.

and so on.

Hon. Mr. MITCHELL: If what Mr. Adamson says is right that conditions are as bad in the industry as he says they are, I do not think I would bother to work as an engineer. I think Mr. Gillis and Mr. MacInnis will agree with me that I belonged to a pretty powerful trade union before there was any legislation of this kind or character.

Mr. ARCHIBALD: I should like to ask the minister if it would not be practical to drop all of paragraph 2 of subsection (i)? You have mentioned certain professions there, skilled and unskilled. If you are going to mention any professions why do you not include preachers, chartered accountants and politicians? Why single these people out and give them the status of being above and beyond the ordinary hoi polloi? I would suggest the removal of that. Then, as the minister has already pointed out, it would fall back on themselves for labour relations, and they have good sense and all the rest of it. Leave it out. Then there would be no fight over who was a professional man.

Mr. MACINNIS: Arising out of some remarks made by the minister a moment ago I should like to say a few words. Paragraph 2 of subsection (i) has nothing to do with what the engineers are doing in their particular employment. It provides only that if they are qualified according to the laws of their particular province that they are not entitled to collective bargaining under this Act.

Mr. DICKEY: And employed in that capacity.

Mr. MACINNIS: Employed in that capacity. What does that mean? Is not every engineer who goes into a plant to work in the engineering department of that plant an engineer in that capacity? All right. As the industry has developed today there are hundreds of engineers where there were only a few, one or two, a very few years ago.

Mr. MACNAMARA: This chap has to be registered.

Mr. MACINNIS: He would be registered as an engineer.

Mr. MACNAMARA: Licensed.

Mr. MACINNIS: Licensed.

Mr. CROLL: Qualified.

Mr. MACINNIS: I agree with Mr. Archibald that this section should be dropped because no group is compelled to ask for certification under the Act. I do not see any reason why doctors should be either included or excluded because I heard over the radio the other night that they had decided that from now on their fees would be such and such. They have raised their fees by a dollar per call and if you want to call him up on the telephone there will be a charge for that, too. When you are in an organization like that you do not need this legislation. They use the knife. I do not see any reason why we should not delete paragraph 2 of subsection (i) and if that is not agreeable why we should not delete the word "engineer" in it. We cannot leave it at the discretion of the board because this is a definition of employee.

Mr. CROLL: There is no discretion.

Mr. MACINNIS: There is no discretion there. You have to take employee in relation to subsections (*b*) and (*c*) of section 2. I would move that this section be deleted.

Mr. BOURGET: As a member of the engineering profession I should like to say a few words on this question. We have discussed this matter in the steering committee and, of course, I do not agree with what Mr. Gillis has just said. He mentioned the fact that we have received many telegrams from the engineering institute, and he also mentioned the fact that the engineering institute is controlled by employers.

Mr. GILLIS: I did not say that.

Mr. **Bourget**: I gathered that from what you said.

Mr. **Gillis**: I did not say that.

Mr. **Bourget**: I appeal to the members of the committee whether or not it is true.

Mr. **Gillis**: I would like to put you straight on that. I said the representations from the engineering institute came from a small executive body. I said you will find that there are two classifications of engineers, those in the managerial class and those in the employee class, and that on the executive body of your institute you will find that the engineers are largely in the managerial class rather than the employee class. That is why I said that I did not consider that it carried as much weight as representing the views of the employee class of engineer.

Mr. **Bourget**: All right, but I can assure you as a member of the engineering institute that we have as many employee members as those of the managerial class in the institute. The telegrams we have received from employees or employers do not have any bearing on the question. I think what the committee wants is to get an expression of opinion from all the associations of engineers in all the provinces except Prince Edward Island where there is no association. They are the legal bodies in the provinces which are entitled to speak on behalf of the whole engineering profession. The institute is just an organization that gathers together all the engineers of Canada, but it is not a legally recognized body in the provinces.

When we first discussed this clause in the committee at the first or second session the members asked, "Who are entitled to speak on behalf of the engineers"? Today the minister or deputy minister say they have received letters or telegrams from the councils of all the associations of the provinces saying that they are against the inclusion of the word "engineer" in the bill. You may say that we have some group of engineers who are now bargaining collectively, but I say that organization can work even if they do not come under this bill. Moreover, I think that we have our own union just as the lawyers have their Canadian bar association and their own associations in the provinces. The doctors have their medical association. Those are unions. We are not depriving our member of the right to go into a union. We have our own and we are proud of it.

It is true, as Mr. Adamson has just said, that we were the poorest paid profession. I am glad he did not bring that up in the House because if you remember correctly in the House last year I was the one engineer who insisted that the government give an example in this country by giving higher salaries to a profession that has worked hard during the war, and I think I may proudly say it is the one profession that during the war did the most towards the winning of the war. It is a profession of builders.

That is why I would not like to see our profession included in this bill. I have nothing against other professions but I think if we include the word "engineer" then let us be fair to everyone of us. Let us include lawyers, doctors and everyone.

I am not against those engineers who have made agreements for collective bargaining. They may not have been well treated by certain companies, but I think in the last few years the trend has changed a little and employers are learning to deal more with their employees. You will admit that no employer who has any principle left will refuse to bargain collectively with a certain group of employees who do not come under this bill. I think you will all agree with me. Gentlemen, that is my point. I am sorry I could not put it in better English.

Mr. **Lockhart**: Would the deletion of the clause not meet your wishes?

Mr. **Bourget**: The deletion of the clause, sure, I will agree to that.

Mr. **Johnston**: That is the motion now.

Mr. MacIvor: Question.

Mr. Bourget: Just a minute; I want to be clear on that point. Will that bar anyone, the medical profession, dental profession or professional engineer?

Mr. Lockhart: The whole works.

Mr. Bourget: I will agree with that.

Mr. Skey: I should like to ask the minister again if we are not already getting into a position whereby people like chemists and geologists, and so on, are asking for inclusion in their professional status, and if we would not have any number of other groups coming before the government or before the labour relations board asking to be included as a professional group, and we would have the same situation arising in many other ways. We would have many other groups of employees and their professional associations. Would the deletion of the clause not save the government a tremendous amount of trouble in the future and place the whole onus on the board for defining their status?

Mr. Case: I have one observation to make. It seems to me that the moment you begin to qualify then you also introduce the process of disqualifying. If we delete the clause it becomes wide open and does not disqualify nor qualify anyone. They are all eligible.

Mr. Merritt: I would like to say a word. I do not think we can easily ignore the expressions of opinion of the professional engineers' associations of the various provinces. I do not know much about them, but I understand they are by statute in their provinces the governing body of the professional engineers in that province. I understand that they set standards of excellence which must be reached by members of their profession, and that they have the right, for instance, to prevent a professional engineer, whose qualifications they do not approve, from practising in their province. I think if you ignore their wishes, which I understand have been unanimous that the clause should stand as it is, you may be doing some harm to the recognized body which governs that profession. I am concerned about these 1,100 whom Mr. Gillis talks about. I would not like to see anyone disenfranchised, so to speak, like that. Therefore I am very much in favour of Mr. Adamson's suggestion. If you enable them to become in any unit a craft union, so to speak, I think you have a good compromise between the two views. They can adopt it or refuse to adopt it as they see fit.

I feel myself that there is much more to this than the simple question of industrial relations. I think it goes further into the right these organizations have to govern their professions in their provinces. Before you decide to delete this clause against the expressed wishes of the governing bodies I think we should give serious consideration to Mr. Adamson's suggestion which I think would cut the Gordian knot, give the people who have agreements already what they want, and nevertheless satisfy the engineering profession.

There is one thing further I want to point out. If you just delete it you are going to have an awful lot of trouble before your board in deciding whether this engineer has managerial functions and this engineer has not managerial functions. You are going to have great disputes as to whether these engineers should be in a collective bargaining unit. Take the Rand formula whereby every employee, whether he belongs to the union or not, must pay dues. I think the Rand formula was a very fine decision, but as Mr. Justice Rand said it was applied to an organization of the size and nature of the Ford company. It may be that there will be other developments along that line. As I say, while I would certainly not oppose and would support a suggestion that they be allowed to organize in craft unions as they see fit I could not be in favour, in view of the opinion of the governing bodies, of the straight deletion of the clause.

Hon. Mr. Mitchell: I might give a review of my position. We spent a good deal of time on the drafting of this legislation. What we did was we forwarded imperfect ideas to all the national organizations in the country, labour organizations, professional organizations, which Colonel Merritt has just mentioned, and employers' organizations. What is going to be the yardstick? We took this as the yardstick, that the expression of the national organization speaking for their constituent members was the majority voice of the profession. That is why that is in there. When you come to the medical profession and they pass a resolution and say, "We want to be excluded from certain legislation," then on a fundamental question like that I think you have got to give some respect to the viewpoint expressed by that organization. The same thing applies to lawyers, dentists, architects, and now we have got the engineers. As I said before there is nothing to prevent those people from forming an organization, and I expressed my own opinion that if they did do so and they asked for the conciliation services of my department they would certainly get them. I do not know whether I would not go so far as to put a commissioner in there if there was a dispute notwithstanding that they were not certified under legislation.

Mr. KNOWLES: They would get it under your discretion as minister, not under the Act?

Hon. Mr. MITCHELL: I think I have got enough power—

Mr. MACINNIS: You are on dangerous ground.

Hon. Mr. MITCHELL: No, I am not. Under section 56 I can do that quite easily. That is the position we are in. What are you going to do? Are you going to listen to the majority opinion of these organizations, or are you not? Whatever you may do about engineers I think we are certainly obligated to have the lawyers, doctors, architects, and the dentist in the bill. The only reason this discussion has come up is because there is a group inside a profession who feel that particular word "engineer" should be excluded from the bill. If we had not had it there we would have had a discussion just the same. Whether it is in there or not we would have had a discussion.

Mr. SKEY: Have you not had other applications to be included in that clause, too?

Hon. Mr. MITCHELL: Yes, we have, the chemists.

Mr. SKEY: And geologists?

Hon. Mr. MITCHELL: No.

Mr. CROLL: May I say that I support the contention of Mr. MacInnis that we leave them on their own, but under P.C. 1003 there has been excluded from that domestic service, agriculture, hunting and trapping, and horticulture. There is some reason for it. By implication since it is not included in the Act, they may, entirely in their own discretion, say they may not bargain collectively. That is all it is. There was some good reason at that time for excluding them during the war perhaps, but there is not any reason now and so they are left on their own. I think these other professions ought to be left on their own. The lawyers are not likely to be asking for a collective bargaining agreement. They have got a better union themselves than the government can ever provide them. Mr. MacInnis referred to the medical men and spoke of their union which raised their pay by announcing it on the radio.

Mr. KNOWLES: Just like Mr. Abbott.

Mr. CROLL: But to exclude people from the implications of that Act is a wrong principle when the minister says we are trying to bring as many people as we possibly can within the legislation.

Mr. POULIOT: I would remind the committee that the professional engineers are the oldest union. They existed as guilds in France and England and everywhere. We have a group of men who have common interests. They meet together. They have representatives who apply sanctions when a member does not behave properly. They have common interests. It is entirely different from the associations which come under the bill. In my humble opinion that clause of the bill has been wisely provided so as to any difficulty. If the clause is struck out then we will have difficulties. Some will want to belong to another union, and there will be a complete mix-up. I do not say that because I am parochial. I have not practised law for fifteen years, but I still belong to the law association of my province. I am satisfied with what is being done there. If any lawyer acts improperly with his client he is reprimanded and punished by the executive of the association and is prevented from practising for a certain period of time. That is the sanction that is imposed on lawyers so that all lawyers act according to the ethics and the standards of the profession.

With regard to the fees which are charged by lawyers for the information of the members I might say that there are two kinds of fees. There are fees to be paid by one party to the lawyer on the other side who wins the case. Then rates are set by the council of the bar association, and the lawyer cannot charge any more than the amount that is set by that council. When a lawyer charges his client more it is a matter of understanding between him and his client. Suppose an individual goes to a lawyer to ask him if he will take his case. The lawyer says, "I will look after you if you will pay me so much." If the client agrees to that payment, what ever it is, he cannot blame anyone except himself for agreeing to pay that amount. If he finds the fee too high he only has to go to another lawyer who may charge him less. Therefore it is an understanding between one man and his lawyer.

With regard to the fees that are paid by one party at court to the lawyer on the other side it is decided by the council of the bar association, and the memorandum of fees is approved by the clerk of the court, and no one can charge any more. I do not know anything about the practice in the provinces outside of Quebec, but I presume it is the same thing all over the country.

Mr. MacInnis: I want to say one word before we adjourn because I should like to see a vote on this clause. If you leave that clause in you are debarring people from doing certain things they may otherwise do. You are limiting their freedom. If there are engineers in industries whom the engineering institute has failed to get proper salaries and wages and proper conditions then if you leave it in you are preventing those engineers from acting on their own behalf and forming an association to bargain collectively. You are absolutely doing that. The engineers do not come under the Act. I do not think there can be any successful argument in that regard.

If you delete this altogether you are not compelling doctors, lawyers, or engineers to come under the Act, but you are doing the same thing with them as you are doing with plumbers, conductors, street railway men, miners and others. You are leaving them free to make use of this Act or not make use of the Act. I do not think it is democratic procedure to say that a certain class of people cannot take advantage of legislation on our statute books to better their own condition, particularly when their own profession has failed to do that. I think if you delete this altogether you are leaving the matter free and making the Act work.

Mr. Bourget: I do not want to delay the work of the committee too long, but I should like to say that the purpose of this bill is to create harmonious relations between employer and employee. That is the object of it. This bill outlines the procedure that is to be utilized by employers and employees. If you exclude the word "engineer" from the bill what is going to happen? You are going to have conflicts between the associations of engineers and labour unions. That is what is going to happen. We have to foresee these things. That is what is going to happen.

Now, it has been said that some groups of engineers have not received the best salary; that might be true. I agree with that. However, one should also take into account the fact that the engineering profession is a young profession. It has only been established twenty-five or thirty-five years. Of course, there is something more to it. As has been said a few minutes ago, we have our own organization. If those engineers who are asking for permission to come under this bill are not satisfied, they can always change their council. Every year we have elections and we can change the council. Mr. Adamson and Mr. Sinclair who are engineers can both testify to the truth of that.

We have made gains in securing higher salaries for the engineers. Therefore, Mr. Chairman, I believe we should leave the section as it is now. In a year or two, if we find it does not work, we can change it then. Let us leave it as it is at the moment.

The CHAIRMAN: Before we proceed any further, may I remind the members it is twelve-thirty. Would the committee be agreeable to completing the discussion on this point even at the cost of sitting until one o'clock?

Mr. CROLL: Ask the question now.

Mr. TIMMINS: The discussion on this matter arose because certain representations were made by people engaged in the engineering field. Speaking for myself as a lawyer, and having regard to the representations made to the minister and his department in drawing this clause, the legal profession has said it desired to have lawyers excluded from the Act. I think we should be guided by that. Since the medical profession say they wish to be not within the purview of the Act, I think we should be guided by that. However, in respect of the engineering profession, the minister has had representations made to him which convinced him that the engineering profession generally—

Mr. BOURGET: 90 per cent.

Mr. TIMMINS: Whatever it may be, the minister has received representations that the engineers wished to be not included in the Act. All we are doing here is trying to make up our minds whether or not the minister has had full information and we should be guided by the information he has or whether we should be guided by the representations which have been made to us individually.

I believe the whole clause is useful. Further than that, I think it is necessary and it should be continued in the Act. We should confine our discussion or voting to the question of whether or not, "engineering" should remain in this clause or not.

Mr. KNOWLES: I noted the minister remarked we probably would have had this discussion anyway. I think we would have had the discussion but not the representations which have confused us. Put it this way; supposing this sub-clause (2) had not been put into the bill at all. I do not think either the lawyers or the Bar Association would have made a clamour to have themselves excluded from the bill. Lawyers are not interested in collective bargaining. It is not an issue for them and the same is true of doctors.

Hon. Mr. MITCHELL: Why do you say the same is true for doctors? Medicine is an industry. Take a big hospital like the Royal Victoria, for instance, or any other large hospital, it is an industry.

Mr. KNOWLES: If the doctors in the Royal Victoria want collective bargaining I think they should have the right, but this denies it to them. I say further with regard to the representations we had from the engineering institute that if this clause had not been there in the first place we would not have had those representations. Why did we have these representations? Because this clause was put in which seemed to deny collective bargaining to some employee engineers who now have it, and they made representations against the clause being in here, and when the employer engineers heard of it they got the impression that to take the word "engineer" out of the clause would be a case of forcing the employer engineers into collective bargaining. I think that they have misunderstood it.

Hon. Mr. MITCHELL: I have not had any representations whatsoever from any employer in this country.

Mr. MACINNIS: Managerial engineers.

Hon. Mr. MITCHELL: Except from the organization.

Mr. KNOWLES: The representations that are causing us concern this morning are from engineers who are on the managerial end. I submit that the engineers and lawyers are misunderstanding this when they think that to take this clause out forces them into collective bargaining. It does not do anything of the kind. When we propose to take it out we simply propose to give these people the right to enter into collective bargaining if they want to. I cannot help but remember the changes that were wrung in this committee the other day about freedom, and fundamental human rights when there was a clause disbarring lawyers from appearing before conciliation courts.

Mr. CROLL: You were against it.

Mr. KNOWLES: I have the same fundamental right to be inconsistent as my friend.

Mr. DICKEY: What I have to say has particular reference to the point that Mr. Knowles tried to make, that lawyers or doctors have no reason to want to have this clause stay as it is. That is absolutely incorrect. They have a very very serious reason to want the medical profession and the dental profession to be named in this clause because it is a definition clause. It defines the word "employee". If that clause is not there a doctor who is an employee of a plant hospital, lawyers who are employed in the legal branch of an industrial concern, are then employees under the definition of this Act. A trade union may be certified as the bargaining agent for the employees in this unit. They reach an agreement which includes, for instance, the check-off. Then the lawyer, doctor or any professional employee then comes under the check-off.

Mr. CROLL: No, no.

Mr. MACINNIS: No.

Mr. DICKEY: Why not?

Mr. CROLL: Because one individual does not bargain. A trade union may cover a certain number of individuals who are in the same craft, the same work.

Mr. SINCLAIR: What about the sulphite workers? Everybody in the plant is in the union.

Mr. DICKEY: Where are they to be excluded? The only exclusion is in this clause. That is the only exclusion because otherwise the word "employee" means everybody that they may bring in under the words "manual, clerical or technical work".

Mr. CROLL: It is in a confidential capacity.

Mr. DICKEY: No, not a confidential capacity at all. I submit that that is what excludes these people from the necessity of joining a trade union and that is a right which should not be taken away from them.

On the question of leaving the word "engineering" in the clause, I just want to say this: to me, it has been a little bit interesting this morning to see that everyone presumes engineering is a profession. I can remember, even in my short experience, when that was not admitted. The reason that has come to be an accepted fact is due to the work of the engineering societies in the various provinces and the work of the Canadian Institute of Professional Engineers. The work this institute has carried out has been to get engineering established as a profession. The engineering societies felt that was the best method of serving the interests of the people who take the training and qualify themselves to do the job. It was believed that the people who do this kind of work could best be served by being represented by a professional organization and not by a trade union.

Mr. Black: I have not taken much part in the debates on these questions. A great many subjects have come up and I have been guided by the recommendations made by the minister and his associates. In this case, I am going to continue to be guided by the minister and his associates. He has, today, the support of the engineers who are represented here. They wish to be excluded from the provisions of this Act.

In addition, I have representations from the Engineering Institute of Nova Scotia that they be not included, and that the Act should be passed as it is in the bill before us. Therefore, I am disposed to support the continuance of this section of the bill excluding the engineers.

Mr. Archibald: I should just like to bring up one point. You are forming a law which is going to carry on for a great length of time. You can specify something as a profession or merely as labour. Consider, for a moment, the evolution in some trades. The minister will recall that the cigar makers were once a strong union and now are no longer a factor. The doctors were once just barbers. Soothsayers and star-gazers were once the highest paid professions in the world. They are washed out now. Once you start specifying, you are going to run into trouble because the evolution in mechanics changes things every day.

Mr. Gillis: I do not want to delay the passage of this section, but I think it has got off on the wrong foot. With regard to what my honourable friend had to say I want to make this point very strongly; while the Engineering Institute has made representations, I said several times and I reiterate it now, I do not think the institute, as such, is speaking for the majority of the employee engineers. They represent largely the managerial end of the profession.

Mr. Black: They would be in Nova Scotia.

Mr. Gillis: No, they would not. I am positive of that. For example, let me draw this analogy. You have, in Canada, the mining institute, and the provincial mining institute.

Mr. Bourget: They are not engineers. They are not qualified under the law to practise.

Mr. Gillis: It is a mining institute. It is a national group, linked up provincially the same as your engineers institute. Would this committee take it as valid evidence if the managerial end of the mining institute said we want to exclude the mining industry from this particular bill? It is the same thing, oh, yes.

Mr. Bourget: Oh, no.

Mr. Gillis: On the other hand you are talking here about doctors, lawyers and so forth. We are not dealing with doctors and lawyers. We are dealing with an industrial problem. You are enacting legislation which has to do with industrial relations. Doctors and lawyers and people like them are not employed in an industry. They do not come under this bill. They are separate and apart completely from it.

Mr. Dickey: Why are they?

Mr. Gillis: The medical association can announce an increase of $1 a visit for themselves over the air. They did not consult you, this parliament or any provincial legislature, did they? Can an engineering employee through his institute announce an increase in wages for himself of $1 an hour? He cannot do it. He is subject to the laws of this country. We are not asking you to write into this bill anything that takes any right from the managerial end of the engineering profession. We are merely asking you to leave this open so that any group in the country which thinks that they want to form a collective bargaining unit, and can conform with the Act as laid down, may do so. You are merely, by deleting the clause as Mr. MacInnis has moved, placing the jurisdictional power then in the hands of the board to administer the Act in accordance with the democratic procedure of this country. You are not ruling anyone out. You are not taking anybody in. I think myself that the words, "doctors, lawyers," and so forth written in that particular clause are merely put in there as verbiage to surround the very question we are discussing today. They have not anything to do with this Act. They never come under it. They do not have to come under it, but in dealing with the engineer you are dealing with a man who is tied up definitely in industry in this country, and will be more so in the future. We have got to draw that distinction between the two classes of engineers, the employee engineer and the engineer at the managerial level. We are not asking you to bring him in. We are merely asking you to leave the Act open and the jurisdictional power in the hands of the board to continue this collective agreement for 1,100 people who have already entered it. That is all. If any new group of engineers in this country wants to form a collective bargaining organization then all they have got to do is to comply with the Act as laid down here and make representations to the board. You are not bringing them in; you are not leaving them out. You are leaving the door open. That is all. I suggest that the motion Mr. MacInnis moved should be carried. It is democracy; it is not closing the door on anybody.

Mr. SINCLAIR: I should like to make one or two remarks on what Mr. Gillis has said. To begin with, neither the Engineering Institute of Canada nor the Mining Institute have any professional connotation, as far as that is concerned. It is the eight provincial associations in the provinces which decide what are the standards. They also decide, just as the medical profession does in the provinces, what are the consulting fees, but they have no more power than the medical association has by their announcement yesterday to say that in a plant where a doctor is employed as an employee, "that your pay is now lifted." They cannot say that, nor can, for example, a mining company in British Columbia which employs a battery of lawyers. They and they alone are the ones who say to the lawyers what their salaries are going to be. It is quite true that the British Columbia law association can announce that on taxation its fees are going to be raised, but that again does not affect the salaries of lawyers or doctors or dentists who are employees, and your engineers are in exactly the same category in that relationship as are doctors, dentists and lawyers who are employees of companies.

I was about to move for the deletion of this clause and vote for it until the point raised by Mr. Dickey, which I think is a very important point, the fact that if you delete this clause then all employees can come under a collective bargaining agreement except those who are managers, and so on, in class one. I am thinking of a small pulp town in my riding where there is one doctor and four or five junior engineers and the whole plant has an industrial union.

There is an industrial union for the whole plant, as is the case in most of these plants, which is the Pulp Sulphite Workers Union. If this exclusion is not contained in clause (2), will that mean the four or five junior chemical engineers are all automatically going to be bargained for by that union?

Mr. GILLIS: No.

Mr. SINCLAIR: I am not so sure. I believe the clause Mr. Adamson intends to move is a more satisfactory approach to the problem. It does permit those engineers who wish to be employee engineers, not consulting engineers, or mining engineers, but employee engineers to bargain with their employers. It will do that. It will do the same for doctors, dentists or architects who are similarly employed as employees of large corporations. I would suggest Mr. Adamson read the third clause he intends to move.

Mr. ADAMSON: Thank you, Mr. Chairman. After this motion is voted upon, I propose to move this as a third clause in this section. It reads as follows:

> Where a number of professional persons working for a single employer so wish, they may form a professional association empowered to bargain collectively with their employer.

I just mention that. I do not propose to move it—at least I have moved it. I should like some discussion on it in order to ascertain the general reaction of the committee to it. I believe it will overcome our difficulties.

Mr. CROLL: May I say, only with respect to what Mr. Sinclair said with reference to lawyers and doctors, we have in the province of Ontario and across the whole country, hundreds of industrially unionized plants, and the office staff is never covered by that union. As a matter of practice the office staff has to form a union of its own and has difficulty in doing it. It is very well known. It is never intended that they should be covered by it and they are never covered by it. I believe that is the practice across the whole of the country.

Mr. SINCLAIR: But these chemical engineers are working right in the plant. They are not office staff. They would certainly be included. They are on about the same level as a foreman.

Mr. CROLL: Foremen are not included.

Mr. MACINNIS: My friends, I am afraid, do not know very much about collective bargaining and how it is arranged. A group of employees making application to be certified as the collective bargaining agent must indicate the section or group of employees for which they are making the application. Then, there is a vote taken. It is only those employees who are included who vote for that bargaining unit that is included in the bargaining agent. It does not include the office staff. A doctor would be a member of the office staff. It does not include any member who wants to keep outside of it.

When Mr. Justice Rand made his findings in the Ford dispute, all the employees did not have to pay dues to the union. The office staff was not in it at all. It only included those employees working in the plant at a particular kind of work.

Mr. CROLL: The plumbers, bricklayers and carpenters were excluded.

Mr. SINCLAIR: But they have a union of their own.

Mr. MACINNIS: It was not an industrial union, though, it was a craft union. It does not include people who want to keep outside of it. All we are saying here is that people who do want to make application to the board should have the right to do so.

Mr. MERRITT: Would not Mr. Adamson's suggestion, then, satisfy your view entirely? That would give them the power to form a plumbers' union or a craft union.

The CHAIRMAN: Are you ready for the question? It is moved by Mr. MacInnis that paragraph 2 of subsection (i) of section 2 be deleted. All those in favour raise their hands.

Mr. BOURGET: Will you repeat that?

The CHAIRMAN: It is moved that paragraph 2 of section (i) of section 2 be deleted. Those in favour please raise their hands. Those against? The motion is defeated.

Mr. **Adamson**: Now I should like to move my motion, Mr. Chairman. I do not ask that it be voted on today. I move it merely as a matter for discussion and to see if there is any great objection to it, and to see whether it would not overcome our difficulties.

The **Chairman**: To be in order I will read the motion again. It is moved by Mr. Adamson that a new clause, clause 3, be added to subsection (i) which would read as follows:

> Where a number of professional persons working for a single employer so wish they may form a professional association empowered to bargain collectively with their employer.

Mr. **Croll**: May I point out one thing for the information of the members, that under section 4 we are going to deal with the question of check-off, so that the members may know and give it some thought and know what section will be dealt with.

The **Chairman**: Are you willing to adjourn at this time? Adjourned until next Tuesday.

—The committee adjourned to resume on Tuesday, May 18, 1948.

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Canada. Industrial Relations, Standing Committee
" on, 1947/48

SESSION 1947-48

HOUSE OF COMMONS

STANDING COMMITTEE

ON

INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE & a report

No. 7

Bill No. 195—The Industrial Relations and Disputes Investigation Act.

TUESDAY, MAY 18, 1948

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ORDER OF REFERENCE

House of Commons,
Monday, 18th May, 1948.

Ordered,—That the name of Mr. Cloutier be substituted for that of Mr. Boivin on the said committee.

Ordered,—That the name of Mr. Dionne (*Beauce*) be substituted for that of Mr. Beaudry on the said committee.

Attest.

ARTHUR BEAUCHESNE,
Clerk of the House.

MINUTES OF PROCEEDINGS

TUESDAY, 18th May, 1948.

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. The Chairman, Mr. P. E. Coté, presided.

Members present: Messrs. Adamson, Archibald, Black (*Cumberland*), Bourget, Case, Charlton, Cloutier, Coté (*Verdun*), Croll, Dechene, Dickey, Gauthier (*Nipissing*), Gillis, Hamel, Johnston, Knowles, Lockhart, MacInnis, McIvor, Maloney, Mitchell, Ross (*Hamilton East*), Timmins.

In attendance: Mr. A. H. Brown, Chief Executive Officer and Solicitor, and Mr. M. M. MacLean, Department of Labour, Ottawa.

Copies of the following were distributed to members:

(1) Submission dated May 4, 1948, The Canadian Council, The Institute of Radio Engineers;

(2) Submission, dated May 17, 1948, The Canadian Dietetic Association.

The Chairman read a letter dated 3rd May from the Toronto Branch, Engineering Institute of Canada, relative to the exclusion of engineers in Bill No. 195.

The Committee resumed consideration of Bill No. 195.

Mr. Brown was called and questioned.

Clause 2 (i) (ii)

Further consideration was given to the motion moved at the last meeting by Mr. Adamson that the following be added:

> Except where a number of professional persons working for a single employer so wish they may form a professional group empowered to bargain collectively with their employer.

In the course of the discussion, Mr. Croll moved that the word "engineering" be deleted from the existing clause. And the question being put on Mr. Croll's motion, it was resolved in the negative.

On the question being put on Mr. Adamson's motion, it was resolved in the negative.

Subclause 2(i) (ii) carried.

Clause 4

Consideration was given to Mr. Croll's amendment, moved 4th May, proposing that the following be added as subclause (5), viz:—

> Upon the request in writing of any employee, and upon request of a trade union representing the majority of employees in any bargaining unit of his employees, the employer shall deduct and pay in periodic payments out of the wages due to such employee, to the person designated by the trade union to receive the same, the union dues of such employee until such employee has withdrawn in writing such request, and the employer shall furnish to such trade union the names of the employees who have given or withdrawn such authority. Failure to make payments and furnish information required by this section shall be an unfair labour practice.

On the question being put, it was resolved in the affirmative.

The Chairman accepted the following as a notice of motion by Mr. Knowles:—

> That Section 4, sub-section (2) (*b*) be amended by changing the period after the word "Act" to a comma, and adding thereafter the following words:
>
> > "and without restricting the generality of the foregoing, no employer shall deny to any employee any pension rights or benefits to which he would otherwise be entitled by reason only of his ceasing to work as the result of a lockout or strike or by reason only of dismissal contrary to this Act".

The Committee adjourned at 12.35 p.m. to meet again Thursday, 20th May at 10.30 o'clock, a.m.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS,
May 18, 1948.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Chairman, Mr. Paul E. Cote, presided.

The CHAIRMAN: We have distributed to you this morning, gentlemen, copies of a brief received from the Canadian Council of the Institute of Radio Engineers, dated May 4, 1948, but they were only received over the weekend. That is why you get them this morning.

I have also received a brief from the Canadian Dietetic Association, Montreal, with a covering letter addressed to the chairman. I only had three copies of this brief. I received it only half an hour before the meeting but I had time to have a sufficient number prepared and distributed to you a few moments ago.

There is a letter from the Toronto branch of the Engineering Institute of Canada adopting a stand directly opposite to that taken by the Dominion Council of the Engineering Institute of Canada. Would you like to have this letter read to you?

Mr. JOHNSTON: I think it should be read into the record.

The CHAIRMAN: It is dated May 3, 1948, but I only received it last Friday. It is addressed to the chairman.

THE ENGINEERING INSTITUTE OF CANADA

TORONTO, ONT.
May 3, 1948.

The Chairman,
Committee on Industrial Relations,
House of Commons,
Ottawa, Ont.

Re: Bill 195

Sir:—It has been drawn to my attention that your committee has been in receipt of a communication from L. Austin Wright, General Secretary of the Engineering Institute of Canada, saying that the Port Arthur and Winnipeg branches are in support of the policy of exclusion of engineers from collective bargaining. I am unable to find that an action of the executive committee of the Toronto branch has similarly been, or is likely to be, reported to you.

I therefore deem it desirable to advise you of a resolution passed without dissenting voice at a meeting of the executive committee of the Toronto branch, Engineering Institute of Canada, on April 15, 1948, that Toronto branch executive disapprove of the action taken at the February meeting of council of E.I.C., in its decision to ask for exclusion of engineers from labour legislation.

Yours truly,

D. G. GEIGER
Chairman, Toronto branch.

I have also received a copy of a brief presented last year by the Shareholders' Institute. That brief is dated February 12, 1947, and is referred to in the 1947 minutes of proceedings and evidence, pages 61 and 62. At that time it was decided that this group, not being a national body, should not be given the opportunity either to appear or to submit a definite brief on the bill.

You have received from the clerk of the committee a list of the clauses of the bill which are still standing for your consideration. I think that should be of assistance to you.

Mr. GILLIS: Before we pass on to that, I think it was rather unfortunate that we did not have the brief that we have received this morning from the Radio Engineers, and that letter you have just read to the committee, when dealing with the question of including engineers for bargaining purposes in this Act. Unfortunately we have already settled that question by a vote.

Mr. CROLL: No, we did not.

The CHAIRMAN: Order; would you let me call the first item and then I will allow you to proceed. We resume consideration of clause 2 of subsection (i) of section 2 of the bill, and we have before us a motion by Mr. Adamson which reads as follows:—

> Where a number of professional persons working for a single employer so wish they may form a professional association empowered to bargain collectively with their employer.

Mr. ADAMSON: I should like to make one little amendment to that. Instead of "association" I would say "group". It has been suggested to me that it would be better. The reason I moved this amendment was simply this, to see if we could not get clarification of the position of professional people generally who are employed in large numbers by a single employer, with regard to their bargaining rights with their employer. I realize as a professional man myself that I would be against the inclusion of myself, at any rate, in a trade union or bargaining group of that nature because I feel that professional status should be outside that, but I do feel there should be some place where a professional group, whether it be doctors, lawyers, engineers or men with professional training, should have some machinery which would allow them if they are employed in large numbers by a single employer to get together and form an agreement with their employer. I say that because of the reasons I stated before in this committee, that I feel that the professional men are very frequently at a great disadvantage because they, in some instances, have not this power. I merely made this suggestion hoping that some discussion and general airing of different opinions would arise on it.

Mr. MACINNIS: Do I understand—

The CHAIRMAN: I had promised the floor to Mr. Gillis.

Mr. MACINNIS: I am just asking a question. Do I understand that Mr. Adamson is not objecting to, or is not opposed to the professional people having bargaining rights, but he is opposed to having those bargaining rights designated under trade union bargaining rights?

Mr. ADAMSON: Yes, I think there is a difference there.

Mr. MACINNIS: It is a little bit snooty, but it will do.

Mr. ADAMSON: I do not think it is snooty at all. I disagree with you.

Mr. LOCKHART: Would not a part of that letter read by the chairman in connection with the engineers more or less be covered? Would not your amendment include them?

Mr. ADAMSON: Yes, it would include them.

Mr. CROLL: Mr. Chairman, there is one objection, as I see it. I suppose there are as many differences of opinion as there are people around this table as to what is meant by a professional man. That will be the difficulty because some one will have to designate who are professional persons. For instance, the dietitians have made representations. I do not know how many of us feel that dietitians are professional persons. They think they are. Hairdressers may believe they are a profession. That to me seems to be the fatal difficulty here. I suppose we can say that would be the first objection taken by those people who are opposed to giving that status, but I suppose the answer is that the board may say who are professional persons and who are not.

Mr. LOCKHART: In the opinion of the board.

Mr. CROLL: Yes, but it is for us to lay down some definition.

Mr. TIMMINS: Is it not academic having regard to the fact that this definition refers to professional persons working for a single employer? There would not be more than one or two dietitians working for any one employer.

Mr. CROLL: Suppose they want to bargain collectively; do you say they are professional persons?

Mr. TIMMINS: It does not make very much difference whether they are professional or not. There would not be very many persons of that type working for a single employer.

Mr. CROLL: A single employer may have 15. For instance, I presume Simpson's, let us say, would have 15 dietitians or 10 dietitians, at least. That is a single employer. Eaton's may have the very same number. For that reason it strikes me that the administrative part of it will be the difficult part to overcome.

Mr. JOHNSTON: Would it not include any person who is not directly under the Act? Then there would be no objection.

Mr. CROLL: I am not sure. I am going to move an amendment to that. My amendment is that the word "engineering" be struck out of clause 2 of subsection (i) of section 2. That is at line 21, and that the clause be adopted as it stands with the word "engineering" struck out. Then the Act will remain as it was under order in council 1003, and engineers will have the right to bargain collectively as they have had before.

Mr. ARCHIBALD: I will second that.

The CHAIRMAN: Mr. Croll, we have a motion by Mr. Adamson before the chair.

Mr. CROLL: I am moving an amendment to it, an amendment to his motion.

Mr. JOHNSTON: What section is that?

Mr. CROLL: I am just knocking out the word "engineering."

The CHAIRMAN: Mr. Croll, for my information would you read subclause 2 as it would stand if your amendment carried?

Mr. CROLL:

> A member of the medical, dental, architectural or legal profession qualified to practice under the laws of a province and employed in that capacity.

All I said was strike out the word "engineering".

Mr. CHARLTON: We voted that down the other day.

Mr. ARCHIBALD: We deleted the whole clause.

Mr. CROLL: We did not.

Mr. ARCHIBALD: We tried to.

The CHAIRMAN: You are not amending the motion of Mr. Adamson.

Mr. CROLL: This is a motion. It is not an amendment. It is the only motion there is.

The CHAIRMAN: If I understand the purport of Mr. Adamson's motion it is to add those four lines to subclause 2 of clause (i). Is that it?

Mr. MACINNIS: I would support Mr. Croll—

The CHAIRMAN: We are discussing procedure just now.

Mr. MACINNIS: This is on procedure. I think Mr. Adamson's motion is an amendment of clause 2 of subsection (i), and I think it has preference because it was moved earlier. It has preference over Mr. Croll's amendment. We will have to deal with it before we deal with Mr. Croll's amendment.

Mr. ADAMSON: If I may be allowed to say so I meant to add a third subclause, and this was the third subclause. I suppose it really should begin with the words, "Notwithstanding anything herein"—

Mr. MACINNIS: Then it is not an amendment.

Mr. CROLL: If Mr. Adamson moves his as a third clause then my amendment is in order because it comes before that, and if it carries I presume Mr. Adamson's amendment can still carry. Therefore I suggest my motion is in order.

The CHAIRMAN: Will all due respect, Mr. Croll, Mr. Adamson's motion has not been declared out of order.

Mr. CROLL: I am not suggesting that.

The CHAIRMAN: Until such time as it is, or until such time as Mr. Adamson agrees to withdraw his motion temporarily to allow consideration of clause 2 to proceed I cannot accept your motion because we have a motion before the chair. Would you be agreeable?

Mr. CROLL: You have no motion on clause 2 of subsection (i).

The CHAIRMAN: We have a motion before the committee, and we have to dispose of that motion before I accept another one.

Mr. JOHNSTON: Maybe Mr. Adamson would let his stand.

The CHAIRMAN: Order.

Mr. ADAMSON: I am in the hands of the committee. I will do anything. I am only trying to be helpful. I should like an expression of opinion of the committee on this suggestion, but if it will help things I will withdraw it until later.

Hon. Mr. MITCHELL: I would say that your suggestion is bad law to begin with. You have to have a definition of a professional man. I think at the moment what we had better do is to make up our minds if the engineers are in or out, and do not let us have any quibbling. I take this view, and I have always taken it, that in dealing with organizations I take the view of the national organization. I know there is a difference of opinion, but if you are going to listen to every man who walks down the street because he sends you a wire you do not know whether or not he is an engineer.

Mr. GILLIS: That letter was pretty strong and from a very representative body.

Hon. Mr. MITCHELL: I am talking about the national organization.

Mr. GILLIS: That dealt with the national organization, and it completely upsets the other.

Mr. ADAMSON: I was only trying to overcome a situation which does exist under certain conditions where one employer does employ a great number of professional men. I am thinking specifically of the Hydro-Electric Power Commission of Ontario.

The CHAIRMAN: Mr. Adamson, since your motion does not affect in any way clause 2 of subsection (i) would you allow it to stand?

Mr. ADAMSON: I will allow it to stand over.

The CHAIRMAN: Then I accept Mr. Croll's motion to the effect that the word "engineering" in clause 2 of subsection (i) be deleted. Is that it?

Mr. CROLL: That is it.

The CHAIRMAN: The discussion is on the amendment of Mr. Croll.

Mr. LOCKHART: Was clause 2 not deleted by a majority?

The CHAIRMAN: No.

Mr. ROSS: Explain what you mean by taking it out.

Mr. CROLL: Mr. Chairman, under order in council 1003, that is the wartime labour board order in council, engineers were permitted to bargain collectively, and they have bargained collectively since 1944, and have a great number of agreements that we brought before the committee last time. The new bill, and the minister has explained the reason, has excluded engineers. There have been various opinions on that, but my motion is to the effect that engineers be permitted to bargain collectively as they have in the past. That is all.

The CHAIRMAN: Gentlemen, I think it is my duty at this time to remind you that we have printed in the record a brief from the Chemical Institute of Canada advocating their exclusion on the same basis as the engineers have been excluded. You will also find a reference in the second report of the steering committee to the stand taken by the land surveyors of Canada, adopting exactly the same attitude, and also the Canadian Association of Physicists wish to be treated in the same way. To do justice to those groups it is my duty to remind you that when you are dealing with engineers you have to keep these others in mind.

Mr. CROLL: That statement is not quite fair; I may suggest it does not present a proper picture when you say to do justice to them. We are doing no injustice to anyone. We do not wish to. No one must bargain collectively, but if you wish to bargain collectively then the Act permits you to bargain collectively. That is all we say. We do not force anyone. What we are doing is substantial justice to everybody. There is a law there that permits you to do it, but whether or not you do is a matter entirely for you. It prohibits no one.

The CHAIRMAN: I am not taking sides on this question, but I referred to those because the steering committee decided not to distribute their briefs among the members. I am only referring to their stand because you have nothing in front of you from those groups that I have mentioned.

Mr. GILLIS: Mr. Chairman, I want to see if my mind is clear on the matter. Mind you, I think when we voted on this last day we were a bit mixed up on it. What happened last day when we took the vote was that Mr. MacInnis had moved for the elimination of clause 2 of subsection (*i*), which would take out engineers and the other professions mentioned. Mr. Croll is merely taking out the word "engineering" which leaves the road clear for that group, or any section of the professional engineers to come in if they want to. There is nothing mandatory about this Act. There is nothing compulsory about it. Any of the engineers mentioned by the chairman are in a position, if we remove that word "engineering" to either come in or stay out if they want to. There is nothing compulsory about it. I think if Mr. Croll's amendment is carried there is no necessity for Mr. Adamson's motion. I agree with the minister that we should decide that they are either in or out.

Hon. Mr. MITCHELL: That is right.

Mr. GILLIS: If we take that word "engineering" out we leave them in the position to come in if they want to. It leaves in effect the collective agreements established now for certain sections of that profession. It legalizes them for collective bargaining purposes if they want to come in. Let us not act on the assumption that we are doing something that is compulsory. We are merely leaving the door open for them to come in or stay out, as they see fit. I think we should have a vote on that motion.

Mr. Dickey: I just want to say a word. I agree that we should get this motion to a vote, but there is another side to the question. What this Act is doing is setting up rules for collective bargaining to apply to the particular situation of trade unions for employees who can properly belong to and form the membership of a trade union. The attitude of the Engineering Institutes across Canada, as I understand it, is that they want their members to deal with their employers as professional groups and not under the same circumstances as trade unions.

Now, there is nothing high hat about that. It is simply that the conditions of professional employees are very different from the conditions pertaining to members of a trade union. The idea of the national association in excluding them is to try to keep their membership on a professional basis; that is the whole thing.

Mr. Archibald: I should like to say this about it. If we take the word "engineering" out of this section, we are not forcing the engineers into a trade union. We are talking about democracy. This association of engineers is the one thing that is being mandatory. It is saying, "Thou shalt not join a trade union". For example, say I belong to a certain religion. I am a Presbyterian. Someone comes along and says, "You have to be a Baptist". No matter what way you look at it, it boils down to that. Nobody is going to tell me any such thing.

Mr. MacInnis: Mr. Chairman, the acceptance of Mr. Croll's amendment does not make trade unionists of engineers. I want to ease the minds of these professional people on that point. It does not degrade them at all. This Act does not compel bargaining as trade unions. It compels bargaining as bargaining agents of which the trade union may be one. If some body wants to bargain under another name, I do not think it prevents them from bargaining under that name.

About half of our trade unions today, or what goes under the name of trade unions are not trade unions. They are industrial unions. To apply the term "trade union" now is not applying a term which covers the labour movement at all. I try to get away from that by just referring to them as labour unions. Where workers are engaged in an industry as employees, whether they are doing pick and shovel work or whether they are doing draughting or something of that kind, they are in exactly the same position so far as their relationship to their employer is concerned, unless they are in a confidential capacity or managerial capacity. They are selling their labour power to the employer and because they are selling their labour power to the employer, as they increase in numbers they will organize and make a collective agreement. It is only by making collective agreements that they can deal with their employers satisfactorily.

Mr. Lockhart: I wish to be perfectly clear on this point. We voted down an amendment to delete clause (i) of section 2. Now, we are going right back and voting on whether we will take one group out and leave all the others in. I still think if we are going to differentiate between professional groups and trade unions, we either have to do the thing in toto or not at all. I still think we made a mistake in not deleting the clause and stopping all this controversy.

Mr. Charlton: I am in agreement with what Mr. Lockhart has said. I do not think we should make any differentiation between dentists, doctors and architects. If we are going to delete one group, we should delete them all. I am not in agreement with taking out the engineers only.

Mr. Johnston: That question was decided the other day when it was decided to leave the clause as it is. As I stated the other day, I do not think a labour code should bar anybody. Everyone should be able to come under it, even doctors and Presbyterians. If they want to be able to come under this code, they should be able to do so.

I would agree with Mr. Croll in this regard; in view of the fact the 1,100 engineers have asked to come under this Act, they should be able to do so. I believe 1,100 members of any organization are worth considering. They have particularly asked to be allowed to come under this Act. Therefore, I would agree and I would vote for Mr. Croll's amendment. I still think, possibly, Mr. Adamson would have a right and should move his motion because that would fix it so any other group or organization could come under the Act if they so desired, whether they were lawyers, doctors or dietitians. If they desire to take advantage of this code, which is national in scope, then I think they should be allowed to do so. I will support Mr. Croll's amendment because of the fact 1,100 engineers wish to come under this Act. I will also support Mr. Adamson's motion because I think any group should be allowed to come under the Act if that is their wish.

The CHAIRMAN: Are you ready for the question? The question is an amendment by Mr. Croll to amend section 2, clause (i), by deleting the word "engineering". Those in favour? Those against?

The motion is defeated.

Now, the discussion will be on a motion by Mr. Adamson that an additional clause be added to subsection (i) which would be clause (3) and which would read as follows:—

> Where a number of professional persons working for a single employer so wish they may form a professional group empowered to bargain collectively with their employer.

Are you ready for the question?

Mr. MACINNIS: I do not think you can put that clause in as a separate clause because of the wording of this scetion of the Act. If you take clause (i),

> Employee means a person employed to do skilled or unskilled manual, clerical or technical work, but does not include—

the professional people in paragraph 2. Then, you would add a paragraph saying that, despite paragraph 2 and without making any proviso, professional people are covered by the Act. I think it would be much better to make Mr. Adamson's motion a part of section 2 having such wording as, "providing that certain persons—".

Then, you say there has to be a number before they can take advantage of the Act. Yet, if you look at (J),

> Employer means any person who employs one or more employees.

If there is just one employee, by himself, he can enter into a collective agreement with the employer, but if he is a professional person there will have to be a group. All that may be quibbling a bit, but I think your amendment should be made a part of section 2.

The CHAIRMAN: On this point of procedure, you are expressing precisely my views. It was for that reason, in the first instance, I put up Mr. Adamson's motion.

Mr. ADAMSON: I bow to your ruling, Mr. Chairman, if you wish it to be part of section 2, it is perfectly satisfactory to me.

Mr. MACINNIS: I would have supported you, too, but I wanted Mr. Croll's amendment to come first.

The CHAIRMAN: I think it would be more in order if we were to follow the suggestion made by Mr. MacInnis. With your approval, Mr. Adamson, your motion will read as an addition to clause (2), subsection (i).

Mr. MACINNIS: If the principle is approved, it will be referred for legal drafting?

The CHAIRMAN: Right.

Hon. Mr. MITCHELL: I think you have taken a stand and said that the engineer is out very definitely. You come along and qualify that now. How are you going to qualify it in language? It is a negative amendment, considering what you have done today. I do not know of anyone who could put that into language.

Mr. JOHNSTON: Would it not just permit any group of these professional organizations to come under the Act if they so desired.

Hon. Mr. MITCHELL: You have them now.

Mr. MACINNIS: Just one other word; are not acts of parliament and of legislatures full of phrases such as, "Notwithstanding anything in this bill," or, "Despite anything else in the bill", such a thing is provided? I think Mr. Brown and every other lawyer around the table could tell the Minister of Labour that legislation is full of that sort of thing. All that has to be done is to make a proviso and the situation is covered.

Hon. Mr. MITCHELL: I am not a lawyer, but I think I have a measure of commonsense. As my good friend has said, you are either in or out.

Mr. LOCKHART: What was that you said?

Hon. Mr. MITCHELL: Just wait a minute.

Mr. LOCKHART: What was the last remark about commonsense?

Hon. Mr. MITCHELL: I said I am not a lawyer, but I think I have a measure of commonsense. I am not saying this in a critical way. You should say engineers are either in or out. You cannot have qualifications and make the section work, no matter what language you use. You have to either let these people stay out of the Act or put them in it.

Mr. KNOWLES: May I ask the minister a question by way of clarification? The minister says the engineers are either in or out, one way or the other, yet the minister said with regard to the 1,100 who have agreements that this wording will not prevent them from continuing those trade agreements. He has already said, in practice, there is the qualification he says you cannot have. Is not Mr. Adamson simply trying to put into language something which records the fact?

Hon. Mr. MITCHELL: I said the other day, and I shall repeat it, the only thing these people lose by this section is the right to certification. No law in this nation can say that the retired clergyman, for instance, cannot bargain collectively. The only thing those people miss in this legislation is certification, that is all.

Mr. TIMMINS: An employer does not have to bargain with them?

Hon. Mr. MITCHELL: If he has any sense, he will.

Mr. ARCHIBALD: I am going to oppose Mr. Adamson's motion because I agree with the minister in this respect. I add this to it: this is just the thin edge of the wedge of company unionism. Anyone could call his group a professional group. You can go a little too far with that. One of these days, the oldest profession in the world may be on the minister's doorstep.

Hon. Mr. MITCHELL: I do not know to what you are referring.

Mr. DICKEY: I am in agreement with the minister, I do not think the engineers can have it both ways. I believe we have made a decision which is in accord with the expressed wishes of the national organization, that they be permitted to act as a profession. Now, they cannot have it both ways. They cannot have the protection of this Act and the protection of their professional association, too. I think we would be going contrary to the spirit of the votes already taken if we carry this motion.

Mr. CHARLTON: I agree with most of what the Hon. Mr. Mtchell has said. Not being a lawyer, I cannot agree with what he said here. I think Mr. Adamson's motion is simply legalizing what he has been doing for the past four or five years. I do not think a group can be actually kept outside of this Act because it says, "a member", which includes an individual. Whether a group can come in, I do not know, but Mr. Mitchell said they had not been excluded. I do not know whether they had certification or not. However, this is something to legalize what the department has been doing for the past four or five years.

Mr. Croll: I took the original objection to that and the minister agreed with me. I think the effect of Mr. Adamson's clause is exactly what effect he meant to give it. I understand, so far as those who were opposed to engineers being included in the section are concerned, it was a question of some who considered themselves on a managerial basis and some who were more or less on another basis.

The effect, as I read it, will be to at least give some status to those 1,100 people who already have agreements. They are certainly professional persons. They have been recognized as professionals and it will have the effect of keeping these agreements alive. What else will be brought in, I do not know.

Sooner or later, the board will have to say what is a professional man. The board has, in the past, said that they are professional men. Consequently, these agreements will be kept in effect. I think it is worth our while to support this amendment to keep those agreements in effect. I think it would be highly unfair for us to throw these 1,100 people to the wolves. Everyone here agreed that they had raised the standard for engineers. I know very little about them. The professional engineers agree they have raised the standard as a result of the bargaining. I think we ought to keep that bargaining right and this is one way of doing it.

Hon. Mr. Mitchell: I want to state this very clearly; I would not be a party to throwing anyone to the wolves. I was responsible for laying down the basic principles of this legislation. We have heard a lot about democracy this morning and at the other meetings. I took the views of what I considered were the parent organizations; in this case, the Engineering Institute of Canada. The Institute said they did not want to be within the four corners of this legislation. Some of my friends say that is not democratic, but how about the close shop? Would you call that democratic? I think it is, too, but that is the same idea in reverse. If you do not belong to the union, you do not work in that shop. Do not forget that. I am not quarelling with that point of view. These people will not be thrown to the wolves. The agreements will still exist. The only thing is, the organization will not be certified.

Mr. Hamel: They had to be certified before?

Hon. Mr. Mitchell: Yes. I belonged to trade unions and so did Mr. Gillis and Mr. MacInnis, before any of this kind of thing was on the statute books. We used to sit down and deal with our employers. In Great Britain, the most powerful trade union under the canopy of heaven has not any such legislation. They would not touch it. They say, "Let the government keep its hands off us".

This is something which has cropped upon the North American continent. These fellows will not be thrown to the wolves. Apparently there is a difference of opinion. The sensible thing to do—I suppose some of us will be here next year—the sensible thing to do would be to take another look at it and if it is found, in the light of experience, it needs amending we can do that providing we get the support to do it. I should like to go along with you, Mr. Adamson, but I think it is bad law. What you are trying to do, I do not say this disrespectfully or critically, cannot be done. You cannot sit on a tight rope. You have to be either in or out.

Mr. Timmins: Would it be proper to ask Mr. Brown to advise us on what he feels are the difficulties in respect to bringing it in?

Mr. Brown: Mr. Chairman, you have excluded certain of these professions in subsection (2) (i). Now, if you go on and include Mr. Adamson's provision, it can only apply to the professions which are not excluded. I think that is clear.

In other words, it would not apply to the engineering profession or any of these other professions because they are excluded.

There is a further point, I suggest with due deference, that Mr. Adamson's motion is restrictive of the rights of professional people. In other words, it really says you can only suggest, at any rate that you bargain for these professional groups and not otherwise. Under the Act as it stands, they have the right if they are an appropriate group, to go to the labour relations board and be certified. Under P. C. 1003, the engineering group has gone to the board and has been certified.

There is one other point, too, which I think has not been raised and which arises particularly in connection with the engineering group. In some companies you have your classification of engineering employees. Some of them are qualified professional engineers, qualified to practice under the laws of the province and some of them are men who have come up through the ranks. They are all in the same engineering grade; they are all getting the same salary and working under the same conditions. It is very awkward to split that group and say this is the organization which will bargain only for the professionally qualified engineers because you have then left out the other employees in the same classification, you see, who should be bargained for by the same people.

Therefore, the labour relations board, in considering these applications for certification has dealt with all people in the same classification and has said in the bargaining unit there will be all those employees of certain engineering grades. I rather think that the proposition of having a very tight professional unit is apt to lead to practical difficulties in bargaining.

On the other hand there is no doubt about it, if you have a group of employees working professionally, the whole trend of collective bargaining has been to deal with them as a separate group and exclude them from the other classes of employees.

Mr. Adamson: As I said in the beginning, this is an attempt to overcome the difficulties of the professional people and, by professional people, I mean anyone who has presumably taken a course at the university; obtained a degree and been accepted by a professional association such as the Engineering Institute of Canada.

First of all, I think the amendment has served a useful purpose in that it has caused a considerable amount of general discussion on the whole matter. My reason for moving it, and I am going to ask that it be voted upon, was just to take care of the very large corporations which employ 50, 60 or perhaps 100 professional engineers such as the Hydro Electric Power Commission of Ontario and The Bell Telephone Company. Possibly there are other corporations. Then, the engineers will be allowed to form an association and talk, as a group, with their employers. It is for that reason I am moving the amendment.

Mr. Charlton: There is one other point. Do I understand correctly that if the word "engineering" is left in clause 2 that all an engineer would have to do is drop his membership in the provincial organization and then he could go on and be certified? It only says here, "a member of the medical, dental, architectural, engineering or legal profession qualified to practice under the laws of a province and employed in that capacity." If he drops his membership in the provincial organization, or if a group of them drop their membership then they can be certified as a professional group even though they are no longer eligible to practice under the laws of the province. They are working for one individual. Would that not cause quite a riff in the provincial organization? I think Mr. Adamson's motion will get away from any antagonism within the groups themselves.

Mr. Lockhart: I have to have a little clarification. If we go back to subsection (*i*) and read the definition of employee we see that it reads:

> "Employee" means a person employed to do skilled or unskilled manual, clerical or technical work, but does not include a member of the medical, dental, architectural, engineering or legal profession qualified to practice under the laws of a province and employed in that capacity.

Will there not have to be some words put in there, prior to the words of this amendment, and make it a part of clause 2? Would you not have to have some words in there which would read something like this, "but does not exclude a number of professional persons working for a single employer."

Mr. CROLL: We are going to have that redrafted by the legal department.

The CHAIRMAN: Are you ready for the question, gentlemen?

Mr. GILLIS: We had better make up our minds on this matter. We dealt them out. That is exactly the position we are in. You have already voted and adopted a motion to exclude professional engineers. Therefore they are out for collective bargaining purposes, are they not? That is what you decided.

Mr. DICKEY: They are outside the Act.

Mr. GILLIS: If they are outside the Act why are you trying to write them into the Act? It cannot be done. All that will do, in my opinion, if you try that kind of thing, is to split the engineering profession.

Mr. LOCKHART: Are they split?

Mr. GILLIS: There are 1,100 of them who have a collective bargaining agreement and legal rights under the old Act. We have taken that from them under this Act.

Mr. CHARLTON: We are trying to give it back.

Mr. GILLIS: You have taken their legal status from them. In effect all you are doing now with Mr. Adamson's motion, with all due respect to his motives, is to permit the engineering profession to establish in plants where they are employed a company union with the administration of whatever bargaining they may do in the hands of their institute. That is all. If they want that they have got it now. There is no use of our sending a bill to the House of Commons for discussion or out to the public which has a clause excluding engineeers and the other professions and then write in a proviso that tries to bring them in. It makes it look ridiculous. It makes us look as though we did not know what we were doing. That is why I agree with the minister. I think the legal adviser made a very sensible presentation on the question to the committee. I do not know how anyone can bring them in if we have already very definitely ruled them out. I see it as he sees it. If the Act goes out in that way then it will cause a split in the engineering profession. You are going to have 1,100 people fighting for the right to retain their collective bargaining agreements. There is no doubt about that.

On the other question of the great majority of engineers not wanting to come under the Act for collective bargaining purposes, on reading this brief which was presented to us this morning it would appear that in 1944 when a poll was taken, and province by province reported, the engineering profession certainly did not want to remain out. They did favour collective bargaining arrangements, and the only place they can get legal rights to collective bargaining is in an Act of this kind. If you are merely going to leave them in the hands of their institute they are already there. Another thing I do not like about the whole matter is that in effect we have taken away the right to certification and the right to retain certain collective agreements now in effect for members of this profession. I certainly cannot vote for Mr. Adamson's motion to try to include them now when the committee definitely ruled them out. It does not make sense.

Mr. JOHNSTON: Would they not have the right to certification if this clause carried?

Mr. Gillis: No.

Mr. Johnston:

> Where a number of professional persons working for a single employer so wish they may form a professional association empowered to bargain collectively with their employer.

That would give them their certification. You are bringing back the power to allow them to form themselves into a union and you are giving them the right to certification if they so desire. I cannot see anything wrong.

Mr. MacInnis: I have one word before we vote on this. I regret I have not been enlightened either by what the minister has said or by what his legal adviser has said. The minister says in one breath that they are either in or they are out. In the next breath he says they are covered, that those who are in now will not be put out.

Hon. Mr. Mitchell: I did not say that.

Mr. MacInnis: That is what I gathered from what you said.

Hon. Mr. Mitchell: You see you are in a muddle yourself.

Mr. MacInnis: I am so close to the minister it is difficult to avoid it. I took down what Mr. Brown said. He said, "they have a perfect right to go to the board and be certified." That is what Mr. Brown said. If that is not what he said he can clear it up after I sit down. As I understood it his whole argument was that although people were excluded in this section they could still come under this Act for bargaining. I do not believe it is at all impossible to draft an amendment such as proposed by Mr. Adamson despite what is said in the section. Looking over the Act I see that it says in one place, "nothwithstanding anything in this Act." That is subsection 5 of section 9. It says, "notwithstanding anything in this Act," and so on. That means that notwithstanding what may be said to the contrary that a certain thing will happen. Then I turn to—I had it a moment ago—another section where we have another notwithstanding. Then we have "nothing in this Act prohibits the parties to a collective agreement," and so on. There are two or three other places where I saw the same words. When you have the words "provided that" or some such words as that, it will put these people in the position where they cannot enter into a collective agreement with their employers.

Mr. Charlton: I simply want to say I do not think Mr. Gillis is very consistent when he says he cannot vote for Mr. Adamson's amendment. A moment ago he voted to take the engineers out. Now he is going to vote against Mr. Adamson's motion to try to put them in in a legal way.

Mr. Gillis: No.

Mr. Croll: My friend is expecting too much from Mr. Gillis, anyway. You must not do that. It seems to me this is the position. I thoroughly agree that we closed the front door when we voted a few minutes ago but personally I am anxious to see the engineers come in. I do not care if you just allow a few of them in by the back door, no matter how they get in. I think that will bring some of them in that way, and for that reason I am voting for it.

Mr. Gillis: On the question of consistency Mr. Croll is now giving us a first class demonstration of inconsistency. He is the man who argued very strongly against the formation of company unions.

Mr. Croll: Yes, of course.

Mr. Gillis: In effect I am opposed to Mr. Adamson's motion because it provides for company unions among professional groups which are employed in industry. This Industrial Relations Act—

Mr. Croll: Mr. Gillis—

Mr. Gillis: Anyone coming under this, employed in industry, has a legal right to be written into the Act for certification and for collective bargaining purposes.

Mr. Croll: Are these 1,100 in a company union?

Mr. Gillis: No. They were under P.C. 1003. You are not protecting them.

Mr. Croll: Those are the people I want to protect.

Mr. Gillis: No. Under P.C. 1003 they had certification and were protected by law. The order in council covered them. In this Act we are excluding them. We have already done it in clause 2 of subsection (*i*).

Mr. Johnston: Not if you put in Mr. Adamson's amendment.

Mr. Gillis: If you put in Mr. Adamson's motion all you are doing is handing the right to the institute, the national organization, to bargain for these employees in any way they see fit. Despite the fact they have an agreement now that agreement will go out with the passage of the Act because they no longer have any legal status. We have taken it from them. I have already said I do not agree with company unions in this Act. We have so amended it on the advice of Mr. Croll, and I cannot understand his position now that in this Act having to do with industrial relations he is prepared to allow a section of people employed in industry to set up unions outside the scope of this Act. In effect they are nothing but company unions.

Mr. MacInnis: They are in the Act.

Mr. Gillis: No, we have already dealt them out.

Mr. Bourget: I want to say a few words. Some members are saying that we are barring about 1,100 engineers. I can say to my friend that we are not barring 1,100 engineers. Take, for instance, the brief that has been submitted to us by the Northern Electric Engineering Employee Association. They pretend they have 200 members. Of that 200 members only 25 are professional engineers. If we take the same average for all the other organizations which have asked to come under this Act, for instance, the Institute of Radio Engineers, we are not barring 1,100 engineers. We are probably barring 200 or 300. That is all. After all the engineers are not left as orphans. We have our own organization; we have our own union. I do not know of any men better qualified than the engineers themselves to bargain with their employers for the benefit of the engineers. They understand their problems. They know their profession. They have their code of ethics. They have their laws. I do not see why we should include engineers in this Act.

Mr. Johnston: They cannot bargain under this Act.

Mr. Bourget: They can bargain anyway. The only thing we are depriving them of is the obligation of the employer to discuss with them. I do not see why we are taking all this time discussing this. It is clear that dentists, lawyers and doctors are out. Why not engineers? I do not see any good reason for that. In the province of Quebec the corporation of professional engineers have set up a committee to survey salaries. There is a salary survey to be undertaken by the corporation, and a special officer to be appointed. Here we have employed a special officer to make a survey of the companies, municipalities, the government and all the rest as to the salaries of the engineers. Therefore I cannot agree with those who say that we are barring engineers from this Act, that we are doing harm to them. We have our own organization, and I think we should leave the engineers out of the Act.

Mr. Knowles: Without at the moment participating in the argument may I in good faith suggest an alternative to the wording that Mr. Adamson has proposed with the thought that it might put in writing what we are trying to get at. As I see it earlier we voted on the question of whether engineers were all in or all out. The committee by majority made the decision they were to be out. What we are concerned about now is whether we should make some provision to permit employee engineers to still be in. I think that was the motive of Mr. Adamson's amendment. Some difficulties have been found both with the wording and with the idea. My suggestion is this. Can we achieve what we are seeking to do, and can we apply it to all doctors, lawyers and dentists as well by putting instead of Mr. Adamson's words some such words as these at the end of clause (i) of subsection 2? Perhaps I had better read the whole section.

> A member of the medical, dental, architectural, engineering or legal profession qualified to practise under the laws of a province and employed in that capacity,

and my suggestion is that there should be added to that, "at the managerial level." More appropriate words than those might be found, but what I am getting at is it is only doctors, lawyers, dentists and engineers at the managerial level who will be excluded. Mr. Adamson suggests there are cases where doctors who are employed might want to be included not as a professional unit, but as a bargaining group. There are employee engineers working for the Ontario Hydro, and so on, who want to have all the rights of collective bargaining. I wonder whether some such wording as that might not solve the problem. It will also avoid making any distinction between engineers and doctors, and would treat them all alike. We would say doctors, lawyers, engineers, dentists, architects, when employed in a managerial capacity, are out of the Act. Otherwise they are employees and are in.

Hon. Mr. MITCHELL: Let us analyse this. I want to keep on the rails if I can. I do not know of any doctors in a managerial capacity in this country. I do not know of any dentists. There may be, but I do not know of any. I want to stick to this principle. Mind you, I have my own personal views about the section, but I think it would be unwise for the committee to fly in the face of the recommendation, we will say, of the medical society or the organization representing the dentists, or the organizations representing other people here. Here we are sitting down and discussing a trade union bill and we say to the doctors, "you are all wrong; you are all wrong." We say to the dentists, "you are all wrong." We say to the architects, "you are all wrong." I do not think it is our business to do that. They should do that themselves. If in their own wisdom any of these organizations feel they should be a trade union rather than a professional organization I think they have a perfect right to say so, but I am not able to agree with Mr. Adamson's motion.

Mr. ADAMSON: I agree with the minister that the one thing we are trying to prevent is to have professional men as a trade union, and as I said before it is merely to overcome one or two very exceptional cases from which we have had all the representations. I was particularly impressed with the brief of the Engineering Institute of Canada from the Toronto branch where there are, I believe, probably the greatest number of employee engineers in Canada. My intention certainly was to keep the profession as a profession and keep them separate and outside a trade union.

Mr. HAMEL: Since last week I have met 12 engineers from my province representing various industries. They were all employee engineers. I have discussed with them this clause of bill 195 and I have also discussed the amendment of Mr. Adamson. Even if I did not have the exact wording I have discussed it with them because I knew what Mr. Adamson's idea was. There were 12 of them and they were unanimous on two points. The first point on which they were unanimous was to have the right to collective bargaining, but they were unanimous in their opposition to being compelled to bargain, and to having to bargain with a labour union. They were absolutely unanimous on those points.

The question of the qualifications of an engineer has been discussed. Is he an engineer or is he not an engineer? I think the provincial laws in every province give a definition of what is an engineer. It is the corporation itself which decides if one man is an engineer according to their own corporation rules, or if he is not. I think that question does not arise, and we have nothing to decide about that because that is fixed by the organization itself. So far as bargaining is concerned there is absolutely nothing in this law or in any law which prevents these employee engineers from having as a bargaining agent their own organization. They can say that the Canadian institute will be their bargaining agent. Because I met these people who are all employee engineers, and who are definitely opposed to bargaining with a labour union, that is the reason why I voted against Mr. Croll's amendment, deleting the word "engineering." I voted for the deletion of the whole clause because I believe it would put every profession on the same footing, and I am in support of Mr. Adamson's motion.

Mr. Case: Mr. Chairman, I think there is possibly one thing we are overlooking. Representations have been made by what is represented to be a group of engineers. They have asked that they be left outside of the provisions of this Act. It seems to me we are treating this as the last word. We hope it will be for a time, but it does seem to me that as they have asked to be left out they should be left out. If they find that does not work certainly representations will be made in due time to be included in the Act. If they want to be left out I do not see why we should put them in. We can only deal with the representations that are made to us. I think it is sound as it is at the present time, and we should leave it as it is.

Hon. Mr. Mitchell: I should say that in Nova Scotia, Quebec and Manitoba the section is exactly the same in their provincial legislation as it is here.

Mr. Ross: I should like to ask the minister a question. Local 700 in the city of Hamilton, operating engineers—

Hon. Mr. Mitchell: I am a member of it.

Mr. Ross: You should know something about it. They are in a lot of industries. What happens to those men who are in Westinghouse, International Harvester, Firestone, and so on?

Hon. Mr. Mitchell: They are not professional engineers.

Mr. Ross: They call themselves professional engineers.

Hon. Mr. Mitchell: They are not. If I may say this to you, as you know that organization is probably one of the most progressive—I can say this to you—and best paid in the Dominion of Canada. When we formed that organization there was no legislation like this. We built that organization largely on their fidelity to contracts made. Those chaps are not professional engineers. They are stationary engineers, shovel runners, drag-line operators, and what have you. This organization does not need this kind of legislation.

Mr. MacInnis: On one thing we should be quite clear, and that is if we do not include them under this section they are outside the Act. You are making a definition for employee.

> Employee means a person employed to do skilled or unskilled manual, clerical or technical work but does not include—

and then you exclude engineers. If we turn to section 3 we see that it reads:

> Every employee has the right to be a member of a trade union and to participate in the activities thereof.

Now, when you exclude engineers they have not the right to be a member of any group which comes in under the provisions of this Act, unless you bring them in. You decide what you are going to do about it. You bring them in or you leave them out.

Hon. Mr. Mitchell: That is right.

Mr. LOCKHART: Before you put the motion would you read it please?

The CHAIRMAN: Are you ready for the question? Mr. Adamson has moved, subject to proper redrafting by the legal adviser of the department, that the following words be added to clause 2 of subsection (i) of section 2, namely:

> Where a number of professional persons working for a single employer so wish they may form a professional group empowered to bargain collectively with their employer.

All those in favour?

Mr. ROSS: Read it again.

Mr. ADAMSON: I take it it is an exception clause and it should read, "except where a number of professional persons," and so on. I think that makes a little better grammar.

The CHAIRMAN: I will read it again.

> Except where a number of professional persons working for a single employer so wish they may form a professional group empowered to bargain collectively with their employer.

I have qualified that by saying, "subject to redrafting by the legal adviser."

Mr. BOURGET: It cannot be redrafted.

Hon. Mr. MITCHELL: It is all right to leave the child on the doorstep of the other fellow, but it is my considered opinion there is nobody can draft an amendment along that line. That is my considered opinion. It just cannot be done.

The CHAIRMAN: Are you ready for the question? All those in favour of the motion please raise their hands? Those opposed? The motion is defeated.

Mr. DICKEY: Before we leave this clause there is one suggestion I should like to make, that when clause 1 of subsection (i) was considered there was no discussion on the particular wording. There were in the hands of the members, or have since been received by the members of the committee, several briefs which relate very importantly to that wording. I do not want to discuss the submissions in those briefs at the moment, but I do want to suggest that the committee might consider the advisability of now looking at this clause as a whole and discussing it and passing the whole clause (i).

There is one point I should like to draw particularly to the attention of the committee. In the discussion of clause 2 of subsection (i) there were a good many references to the fact that people employed in confidential capacities were excluded, and we should not consider them. That was brought up with respect to lawyers and various other people. Actually the wording of clause 1, in my humble opinion, does not exclude anybody in a confidential capacity except where they are employed in a confidential capacity in matters relating to labour relations. That is a restriction that does not seem to bear out the opinion that is held by some members of the committee. I wonder if the committee would consider going back to that.

The CHAIRMAN: Before I allow any discussion on this I must remind the committee that clause 1 has been carried, and I cannot allow any discussion on it unless it is with the unanimous consent of the committee.

Mr. ROSS: When was it carried?

Mr. ADAMSON: I am sorry to be on my feet so much in this committee and to take up so much time, but it was not my opinion it was carried because I want to move an amendment deleting the words "in matters relating to labour relations." I wanted to delete those six words, and my reason for that is that there are a lot of men employed in extremely confidential capacities not relating to labour relations. There are men working for chemical companies, men working in laboratories or men working on secret formulas for companies where they are definitely working in a confidential manner. In my opinion at least, they should not be in the bargaining unit.

The **Chairman**: Would you give me a moment, please. I would refer you to page 200 of the record of the proceedings. I may say I almost invited discussion on clause 1, but could not get any. I quote from the record.

> Now, gentlemen, we revert to section 2 of the bill, clause (i).
>
> "Employee" means a person employed to do skilled or unskilled manual, clerical or technical work, but does not include
>
> (1) a manager or superintendent or any other person who, in the opinion of the board, exercises management functions or is employed in a confidential capacity in matters relating to labour relations.
>
> I think we should stop there and have a discussion on this first part. Is this agreeable to the committee?
>
> Agreed.

Now, I put the question.

"Shall clause (i) (1) carry?"

There was an interjection by Mr. Gillis who wanted to discuss clause (2) but he was out of order. Then, clause (i) subsection (1) was carried without any objection.

Mr. **Gillis**: I think, under the circumstances, we got off on engineers before we appreciated the significance of clause (1). I think we might very well consider this clause (1) for a moment and the suggestion made by Mr. Dickey.

Mr. **MacInnis**: We did not do enough engineering before we passed it. I guess we ought to go back.

The **Chairman**: Is it the unanimous wish of the committee we should revert to clause (1)? All those in favour of reverting to clause (1)?

Mr. **Gillis**: Are you going to start unravelling this bill because there are new briefs coming in?

The **Chairman**: I must say, frankly, that the section has been carried and unless we have the unanimous consent of the committee we should not revert to any section which has already been carried.

Mr. **Dickey**: That was my request; I put it up to the committee. If the committee considers, under the circumstances, reading the record that everyone's mind was clearly on the point at issue at that time, that is all right. I did think, from the way it happened to go through, that proper consideration might not have been given to it. I made the suggestion on that basis.

The **Chairman**: I shall put the question this way, is there any opposition to reverting to an examination of clause (1), subsection (i)?

Hon. Mr. **Mitchell**: If we are going to keep on dodging backwards and forwards, we will never get through this bill. I think we should go right along.

Mr. **Croll**: Does this section contain the same wording as P.C. 1003?

Hon. Mr. **Mitchell**: No, some few words were added to it, "in matters relating to labour relations". Those are the words added to it.

The **Chairman**: I take it, gentlemen, we cannot get unanimous consent.

Mr. **Timmins**: Does it have to be unanimous?

The **Chairman**: Would you repeat that, I cannot hear you.

Mr. **Timmins**: I do not suppose a motion to reopen has to be unanimous. We are not bound by that rule. Surely, the majority rules?

The **Chairman**: I am responsible for the orderly procedure of the committee. This is the principle I have laid down. If I am in error, I should like someone to point it out to me. If I do not hold to that decision, we will never get through with this bill. Clause (1) has been carried without and dissension of any kind, so it has been carried unanimously.

Mr. **Timmins**: I think, with all due respect, Mr. Gillis unintentionally took us over the fence before we realize it. He had us in clause (2) before we really had our minds on clause (1).

The CHAIRMAN: Yes, but speaking on a matter of procedure, you have to bear in mind that this clause (1) has been carried unanimously. Unless we have the unanimous consent of the committee, we cannot revert to that section.

Mr. ADAMSON: Apropros of reverting to this section, I was certainly of the opinion it had not been carried, but we had jumped to the engineering clause. I had intended to move a motion that these words be deleted. Certainly, I had discussed it with my own group here at the end of the table. I see, according to the record, the section has been carried, but that certainly was not my opinion and I do not think it was the opinion of the group this far away from the speaker.

The CHAIRMAN: When we reached clause (1) subsection (i), I purposely stopped reading and immediately invited discussion on that clause (1).

Mr. GILLIS: There is nothing wrong with the clause at all.

The CHAIRMAN: I cannot allow any discussion on the merits of the clause.

Mr. GILLIS: Why did you allow Mr. Dickey to start this discussion. He injected the principle of the clause into the discussion, and whether we were right or wrong in making our decision.

The CHAIRMAN: I just allowed Mr. Dickey to give the preamble to the question he wanted to raise.

Mr. MACINNIS: To get us over the dilemma, there is a trade union rule that a two-thirds majority is required to revert or change anything which has already been decided. I think, if the committee will accept that, since it is a reasonable condition, we ought to take a vote now. If those who are in favour of reverting to that section can get a two-thirds majority, we should reopen the matter.

Mr. ARCHIBALD: Mr. Chairman, you have laid down a rule that it has to be unanimous consent. I am not going to give mine.

The CHAIRMAN: I rule there is no unanimity on reverting to clause (1) subsection (i) and any discussion on that is out of order.

Now, the next question is, shall subsection (i) of section (2) carry?

Carried.

Subsection (i) of section (2) carries without amendment.

Now, gentlemen, the next is consideration of section (4). While discussing clause (9), Mr. Croll asked leave to make a suggestion to the committee which would be more appropriate in the way of a motion to amend clause (4). With the unanimous consent of the committee at that time, he was allowed to reopen the discussion on clause (4), when it might be reached. This can be found in the record of the committee at page 105.

Under these circumstances, I will call section 4 of the bill. Now, the motion which is before the committee is by Mr. Croll. It is to add a new subsection to section 4 which would be subsection (5) and would read as follows:—

> Upon the request in writing of any employee, and upon request of a trade union representing the majority of employees in any bargaining unit of his employees, the employer shall deduct and pay in periodic payments out of wages due to such employee, to the person designated by the trade union to receive the same, the union dues of such employee until such employee has withdrawn in writing such request, and the employer shall furnish to such trade union the names of the employees who have given or withdrawn such authority. Failure to make payments and furnish information required by this section shall be an unfair labour practice.

Mr. CROLL: Mr. Chairman and gentlemen: the committee will undoubtedly recognize that that is the check-off. It is commonly referred to in the labour movement as a measure of union security. Now, there are various measures of union security. There is the closed shop, the union shop and so on. This is, of course, the smallest measure of union security. I am sure the members of the committee also know it places no hardship on the employer. It is more of a mechanical act on the machines when preparing the payroll. It simply means punching another digit. Consequently, in a great number of collective bargaining agreements, this clause already exists; that cannot be denied.

However, it has this important aspect. One of the things the trade unions need in order to continue functioning is a certain amount of money in their treasury. Sometimes employers who bargain collectively, but nevertheless reluctantly, withhold this particular part of union security, with the result that he continues to carry on a sort of labour guerrilla warfare long after there is any need for it. It seems to me when an employer bargains with a union collectively and the union is certified, that he ought to, in a broad way, give to the employees something that gives them the ability to carry on. What I am trying to say, in effect, is it takes the union out of the fighting stage into the administrative stage which will help labour relations, which is the real purpose of this Act.

Now, I think there are three steps. Usually, there is certification before the labour board. Then comes the collective agreement, and it is my suggestion that when we have a collective agreement we should write in a check-off clause. I know the objection to it is that we are attempting by law to force collective bargaining. We are not attempting to bargain collectively by law at all. We are allowing the employer and employees to reach agreement. However, once agreement has been reached we want stability from the union as well as stability from the employer. I believe this will be a helpful thing. I think it will be a useful clause with respect to good labour relations. If we write it in, we should say the check-off follows automatically in the same way certification follows automatically if the majority of the employees so indicate or so designate. In my opinion, the writing in of the check-off now will be a forward step in labour relations. It will give a lead to some of the provinces who have not yet gone as far as we have. It is imposing no hardship on the employer and, at the same time, it gives the employer something he ought to want and that is a stable union with which to deal. For that reason, I recommend it to you.

Mr. LOCKHART: I just wish to ask a question of Mr. Croll. This phraseology which you have suggested leads off by calling this a compulsory check-off. It commences by making it a compulsory check-off.

Mr. CROLL: No, upon request; that is not compulsory. "Upon the request in writing of any employee"; it is entirely in the hands of the employee.

Hon. Mr. MITCHELL: I think I should say I am opposed to this motion on the principle that what governments can give, they can take away. Those of us who have watched legislation of this character in Europe know that, in Germany in particular, they got so close to the government they were just servants of the state. They thought they were trade union leaders, but they were not. The pendulum always swings backwards and forwards. You see it happen every time. I studiously avoided putting in this legislation things which should normally be put into a collective bargaining agreement by negotiation.

Take for example, the situation in the United States where the law has swung completely the other way. Trade unions are forbidden to make political contributions, are forbidden to have a closed shop and many of those things that men who have lived their lives in trade unions have fought to establish. On these grounds, I do not believe there is any substitute for collective agreements. The next step will be that they will do as they do in some countries and write wages into the law. We do not want that type of thing in the Dominion of Canada.

Mr. CROLL: We write minimum wage laws now.

Hon. Mr. MITCHELL: I know we do, and they are pitifully small.

Mr. CROLL: We could always revise them.

Hon. Mr. MITCHELL: I favour the good old trade union way. We will settle the wages. We do not want to let politicians do it for us. We would rather sit down as free men and bargain collectively. I am frank to admit that I adhere to the British point of view on this question. You should not put into a law something which can be negotiated because, sooner or later, you are going to lose it.

In the United States, there was a lot said about the Wagner Act. Some people, in their wisdom, thought it went too far to the left. Now, we have this other act which many people feel—I am not intruding in the affairs of another country, I am merely using this as an illustration—went too far to the right. You are bound to get trouble when you have such extreme swings from one end to the other.

I should like this legislation, Mr. Chairman, to stay as legislation which will serve purely as a guide for a consideration of the employers and employees. In this way, we will build up confidence between both parties. If they wish the closed shop, let them have it. There is a section specifically written in this Act which says,

> Nothing in this Act prohibits the parties to a collective agreement from inserting in the collective agreement a provision requiring, as a condition of employment, membership in a specified trade union, or granting a preference of employment to members of a specified trade union.

Now, that was written in there to guard what I considered was a fundamental right enjoyed both by the employer and the employee. Take the building trades, for example; they have had a closed shop in that industry for fifty years and the employers would not be without it. Then, you have the typographical organizations of the Dominion of Canada. They have a somewhat similar condition and, generally speaking, both the employers and the employees would not be without it. I think it is far better to negotiate a collective agreement concerning conditions of employment, than it is to have a law setting forth specific conditions. I think you will live to regret it if you move in that direction.

Mr. McIVOR: I was just going to ask Mr. Croll a question. Does this mean that it will make it easier for the union to collect dues?

Mr. CROLL: Yes.

Mr. McIVOR: It will be compulsory for the employee to pay dues?

Mr. CROLL: No, it is not compulsory. He can either pay or not pay. The matter is up to him. He sends a note to the employer telling him to deduct the dues from his pay. When he does not want that done any longer, he writes the employer not to deduct the dues.

Mr. McIVOR: I think any man who receives the benefit of what the union stands for should pay his dues.

Mr. MACINNIS: Just one word; while I agree with a great deal of what the Minister of Labour has said, I am supporting this section which has been drafted by Mr. Croll. The minister said he favoured organized labour setting its own wages. That is quite in order, but it is very difficult in this country with the opposition of employers, for workers in many industries to arrive at a position where they can set their own wages through agreements. These people are employed in unskilled trades and, except in this short period through which we are going now, there are always more workers than employment.

In Great Britain, the situation is different because of different circumstances there. While I would think it would be much better if you could get those who receive the benefits of trade unions to realize that they are receiving the benefits and make it a point of supporting their organization, for various reasons, in this country you have difficulty doing that. As the minister points out, there is a danger that what is put into a law may be taken out by another government.

He mentioned, without naming it, the Taft-Hartley law in the United States. Now, I think those who were drafting the Taft-Hartley law in the United States thought they were pulling a fast one. I am convinced they are going to cement the two large labour bodies in the United States, and that these people will be confronted with a more powerful body than the United States has ever had before. To that extent, I must thank the Taft-Hartley people for what they have done because it was necessary in the United States.

This section, added to what we have, does not, in my opinion, do harm or violence to the principle of the bill which is now before us. I have been a member of a trade union for over thirty-eight years in which there has been a closed shop. We did not have a check-off. It was not necessary because when a person did not pay his dues we told the company he was no longer a member of the union. I have seen the general manager bring a man before him and state he had nothing but contempt for a man who would accept the benefits of a trade union and refuse to pay for its support. In closing, I wish to say I support Mr. Croll's amendment.

Mr. Gillis: I do not suppose we are going to finish this discussion, but I have had quite a bit of experience with this check-off. While it is possible to get a closed shop with organizations like the car workers or the railroad workers, it is not possible in large industries to get the same co-operation of management. Mr. Croll is not suggesting anything which is mandatory or which will take anyone's rights from him.

In Canada today, you have acts in most of the provinces which carry a check-off provision. These provisions were written into the act after a long struggle. As Mr. Mitchell points out, in the formation of the unions in industries such as mining and steel, the employers put up terrific opposition to this question of a check-off.

Suppose this act is adopted and it does not carry this voluntary check-off provision recommended by Mr. Croll. Then, the province of British Columbia decides to set the provincial act aside and adopt the national code. Since there is no provincial act, there is no longer any check-off provision in the law. I think it would be wise to adopt Mr. Croll's suggestion.

Now, comparing either Great Britain or the United States with Canada is not a fair comparison. The trade movement in Great Britain is over 150 years old, so the accomplishment of something like this is very easy. Do not forget, either, that you have a unitary government there and you have a homogenous people who are relatively easy to handle.

Hon. Mr. Mitchell: You are telling me.

Mr. Gillis: However, you get into the mass industries such as steel, coal and textiles and you have a very difficult proposition on your hands. As Mr. Croll has pointed out, I think we have gone beyond the fighting stage in unions. I think the time has arrived when both the employer and the employee as well as the general public should recognize the fact that the legal, sensible way to do business is to sit around the conference table. We should get away from this dog eat dog type of action which we had in the past. I helped to build the trade unions of this country and I do not want to see anybody else have the experience I had when we did not have this legislative protection.

In Nova Scotia we had the check-off. In 1934, we decided it was a bad thing. For four years, we struggled along without it. We found we were in an impossible position. Those who should have been studying the problems of the union were on the road continuously trying to collect dues. Both the management and the union decided we should return to the check-off and we took another vote which restored the check-off. It is the only way you can get stable relations. It relieves those who are administering the affairs of the union from having to tramp around trying to collect dues. They can study the problems of the union, and budget their income. They know what the income will be. Trade unions no longer are just bargaining agencies. They are social organizations. In places where the union has stabilized conditions, you will find the men getting benefits back in educational programs. In my opinion, one of the most necessary steps in creating stable conditions is the check-off.

You know what happened in the steel industry down in my end of the country until that check-off clause was written in the Nova Scotia act. The trade unions did much to solve that difficulty. We do not have any more of the old-fashioned strikes. There are no picket lines. When the last strike took place in that end of the country, things just stopped. There were no picket lines, no fights. We just sat around a table and worked the thing out.

I think we would be well advised to pass Mr. Croll's motion. He is only asking for a very reasonable amount of union security in this bill. Then, too, we should protect the Acts which now exist in the provinces in case this national code is accepted by the provinces in the future.

Hon. Mr. MITCHELL: I am not opposed to the check-off, let that be clearly understood. My opposition is based on the fundamental principle of not letting the state get its hands on you any more than is absolutely necessary. Do not forget this, freedom is like the air you breathe. You do not miss it until you cannot get it.

Let me tell you, the other day the government of Queensland passed a bill. You people talk about peaceful picketing and that sort of thing. This bill would make your hair stand on end. There is one indication of a labour government going to the right. They had to do it. When you start writing into labour legislation things which can be negotiated by agreement, that is what happens.

What my friend Mr. Gillis has said is absolutely true. Mention has been made of the old days in Great Britain. I suppose you will all recall Ben Tillet, of Great Britain, the dock workers M.P. He and I were once talking about industrial craft unions and he said to me, "We do not want these fellows on our backs". Ben actually represented what was considered in those days the unskilled worker, and today that organization is the largest and most powerful trade union in the world.

I come back to the question of principle. I am not opposed to the check-off; I am not opposed to the closed shop. I am not opposed to high wages. I think they should be just as high as the traffic can bear, but I think these things should be settled around the table by agreement because I would not trust the state. They swing to the right and left as they always do. The farther you can stay from them the better it is for everyone.

Mr. BLACK: I want to be consistent. I have been guided very largely by what the minister and his advisers have said. On the other hand, as pointed out by Mr. Gillis, there is the compulsory check-off in Nova Scotia, and I have been in favour of the compulsory check-off there. To be consistent I am going to support Mr. Croll's motion.

The CHAIRMAN: Before I put the question, gentlemen, for the purposes of the record I must mention to you that I have received a wire from the Canadian Manufacturers Association expressing their views on the subject matter of the motion which is before the committee. Is it your desire I should read this wire?

Mr. MACINNIS: Tell us their views. I suppose they are in favour.

The CHAIRMAN: They are opposing any authority in the bill to order the insertion in a collective agreement of any union security clause including the check-off, voluntary or compulsory, and so forth. Are you ready for the question gentlemen? The question is on the motion by Mr. Croll to amend section 4 of the bill by adding a new subsection at the end thereof which would be subsection 5, and which I have read already. All those in favour of the motion will please raise their hands? Those against? I declare the motion carried.

Mr. **Knowles**: Before you leave clause 4 may I in all humility ask the committee to permit further discussion of sub-clause 2B of this section. I may say my reason for asking this is that I happen to be, as many members are, a member of another committee, and the day when section 4 was up for discussion it was impossible for me to be here. I am not asking that the discussion be proceeded with today. I wish to propose an amendment to subsection 2B. I have copies of it which can de distributed today or at a future date. I can give notice to you if you wish or I can indicate the nature of the matter. I am making this request today before we leave.

The **Chairman**: Mr. Knowles, I may say this—order, please. When Mr. Croll's request to revert to section 4 was brought up, we were considering section 9, subsection (5) of the bill. Mr. Croll definitely stated that his motion would be in order under section 9, subsection (5), but it was a motion which was of a nature affecting a certain number of the other sections of the bill. Owing to the general application of his motion, he suggested it would be more in order to bring it under section 4. Then, he asked leave to revert to section 4.

Now, I have to curtail, to a certain extent of course, any discussion beyond the order of business of this committee. I am telling you this to explain how the committee arrived at giving unanimous consent to Mr. Croll's request.

Mr. **Knowles**: I fully appreciate your position. My request cannot be put on the same basis as Mr. Croll's. This would introduce a new matter. The basis of my request is purely a matter of courtesy in view of the fact it was impossible for me to be here at the time this matter was discussed. The committee to which I referred is Mr. Speaker's committee on rules. It is a sort of command when you get an invitation from Mr. Speaker to attend his meeting, so I did have to be away. This is a matter which I did wish to have discussed. It is obvious, if I cannot have it discussed here—this is not a threat—I will have to do it in the committee of the whole House when the bill comes back from this committee. I leave it up to the committee.

The **Chairman**: Gentlemen, it is now twelve-thirty and unless the committee is agreeable to sitting any longer, we should adjourn.

Mr. **Lockhart**: As I am a member of another committee meeting this afternoon, I move we adjourn.

Mr. **Knowles**: Did you make any decision with respect to my motion?

The **Chairman**: I am taking it as notice and we will discuss it at our next meeting. The committee will stand adjourned until next Thursday.

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Canada. Industrial Relations, Standing Committee on, 1947/48

SESSION 1947-48

HOUSE OF COMMONS

STANDING COMMITTEE
ON
INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE & reports

No. 8

Bill No. 195—The Industrial Relations and Disputes Investigation Act

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THURSDAY, MAY 20, 1948

WITNESSES:

Mr. A. MacNamara, Deputy Minister, Department of Labour, Ottawa;

Mr. A. H. Brown, Chief Executive Officer and Solicitor, Department of Labour, Ottawa.

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MINUTES OF PROCEEDINGS

TUESDAY, 20th May, 1948,

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. The Chairman, Mr. P. E. Cote, presided.

Members present: Messrs. Adamson, Bourget, Case, Charlton, Cote (*Verdun*), Croll, Dechene, Dickey, Dionne (*Beauce*), Gillis, Gingues, Hamel, Johnston, Lapalme, Lockhart, MacInnis, McIvor, Maloney, Mitchell, Ross (*Hamilton East*), Sinclair (*Vancouver North*), Timmins.

In attendance: Mr. A. MacNamara, Deputy Minister, Mr. A. H. Brown, Chief Executive Officer and Solicitor, and Mr. M. M. MacLean, Department of Labour, Ottawa.

The following, relative to the exclusion of engineers in Bill No. 195, were read by the Chairman:

(1) Letter dated 18th May, 1948, from the Chemical Institute of Canada, Montreal.

(2) Letter, undated, from the Canadian Council, Institute of Radio Engineers, Montreal.

The Committee resumed consideration of Bill No. 195.

Mr. A. MacNamara and Mr. A. H. Brown were called and questioned.

Clauses 4, 9, 11, 16, 18 and 19

Stood over.

Clause 23

Carried.

Clause 27

On Thursday, 6th May, on motion of Mr. Smith, an amendment was adopted viz:

> That the Department of Labour be requested to prepare an amendment providing for the use of the plural form, or sense, of "conciliation officer" in this and relative clauses.

Honourable Mr. Mitchell suggested that the amendment was appropriate to Clause 16 and recommended that it be amended accordingly. The Committee concurred in this recommendation.

Clause, without amendment, carried.

Clause 16

The Committee reverted to the consideration of Clause 16(b).

On motion of Mr. Mitchell,

Resolved,—That the words "a Conciliation Officer" in line 9 thereof be deleted and the following be substituted therefor:

"one or more Conciliation Officers".

Clause, as amended, carried.

Clause 39—Mr. Gillis moved,

That the responsibility for the enforcement of the Act to be placed with the Canada Labour Relations Board and not with the employer, or the trade union.

And the question being put, it was resolved in the negative.

Clause carried.

Clause 48—Pursuant to a motion by Mr. Smith adopted Tuesday, 11th May, referring this clause to the Department of Labour for redrafting, Mr. Brown recommended that the words "by registered mail" be substituted for the words "through His Majesty's mails" in line 3 thereof.

Clause, as redrafted, carried.

Clause 35—On Motion of Mr. Mitchell,

Resolved,—That all the words in line 3 thereof be deleted and that the following be substituted therefor:

> of any work, undertaking or business that is within the legislative authority of the Parliament of Canada, including but not so as to restrict the generality of the foregoing.

Clause, as amended, carried.

Clause 54

Carried on division.

Clause 55

Carried on division.

Clause 67

Carried.

Clause 9—The Committee reverted to the consideration of clause 9(5).

Mr. Croll moved,—

That the Canada Labour Relations Board shall have power to require an employer to disestablish an employer formed, influenced or dominated organization.

And the question being put, it was resolved in the negative.

Clause carried.

Clause 11

Carried.

Clause 18

Carried.

Clause 19

Carried.

The Committee adjourned at 12.35 o'clock p.m. to meet again Tuesday, 25th May, at 10.30 o'clock a.m.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

House of Commons,

May 20, 1948.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The Chairman, Mr. Paul E. Cote, presided.

The Chairman: First of all, gentlemen, I should like to place on the record a letter which I have received from the chairman of the board of directors of the Chemical Institute of Canada. Would you allow me to place it on the record as if it were read?

Carried.

Montreal, May 18, 1948.

Mr. P. E. Cote,
Chairman of the Standing
Committee on Industrial Relations,
House of Commons,
Ottawa.

Dear Mr. Cote: Last week's newspapers informed us that engineers as mentioned in the text of bill 195, were excluded from the definition of 'employee'. In order that chemists be also excluded, I believe that the bill would need to be amended. I take the liberty of reminding you that the members of the Chemical Institute of Canada, through their Council and their Board of Directors, wish very much that the government will submit an amendment to this end. In addition to the letter referred to above, our Institute has submitted a brief to the Honourable Minister of Labour. We are glad that the government has won its point in the case of the engineers and we hope that the chemists will be treated similarly. I am glad to let you know that the division alluded to in the case of Engineers' Association does not exist among the chemists. There is but one association of chemists and its members wish to be excluded from the definition of 'employee' in bill 195.

Yours very truly,

Leon Lortie,
Chairman, Board of Directors,
The Chemical Institute of Canada.

I should also like to place on the record a letter from the Institute of Radio Engineers addressed to the chairman, and commenting on the brief which was circulated to the members of the committee at the last meeting. Is that agreeable?

Carried.

1250 St. Matthew Street,
Apt. 4, Montreal, Que.

Mr. Paul Emile Cote. Chairman,
Industrial Relations Committee,
Room 411, House of Commons,
Ottawa, Canada.

Dear Mr. Cote: I am enclosing herewith four additional copies of the brief submitted by the Canadian Council, Institute of Radio Engineers, in connection with bill 195.

I shall mail you a further thirty copies on Saturday which you should receive on Monday.

I regret that my lack of experience with such matters has resulted in this delay in placing sufficient copies at your disposal.

Although I am aware that the deadline for the presentation of material is past, there are a few additional facts which have come to my attention this last week which support the thesis of the Can. Council, I.R.E. brief which I beg leave to bring to your attention.

The thesis of the brief which our Council submitted was that whereas all of the evidence available indicates that 90 per cent of Canada's engineers and scientists are in the employee category and want to retain and exercise their collective bargaining rights, their professional and technical societies are dominated by persons in the category of private consultants or management, who, in this instance, have let their personal preference prevail over their duty toward the majority membership of the organizations which they control.

The additional evidence which I wish to present is as follows:

I have been informed by the chairman of the Toronto branch of the Engineering Institute that his council and the council of the Peterborough branch both protested to the general secretary of the Engineering Institute against the stand taken by the E.I.C. for the exclusion of engineers from the provisions of bill 195 and requested inclusion instead. The Toronto branch alone contains about one fifth of the professional members of the E.I.C.

These requests were completely ignored by the general secretary of the E.I.C. according to my information.

I have been further informed during the past week concerning the Association of Professional Engineers of Ontario which has, I believe, come out in support of the E.I.C. position on exclusion, that their council, which has eighteen members, is composed as follows:

Presidents, vice-presidents or managers of companies	12
Consulting engineers	2
University professors	2
Engineers in employee category	2
	18

Among this group, five in the management class, one consultant and one university professor are members of the E.I.C.

An examination of the personnel of the councils of the other provincial professional associations (which in all cases are much smaller) shows exactly the same trend both with regard to domination by management and, in most cases, an even greater preponderance of high level E.I.C. membership.

The weight of the evidence therefore appears to point very strongly to the conclusion that the effort to obtain complete exclusion of engineers from collective bargaining procedures under bill 195 is, in fact, a deliberate conspiracy on the part of management to deprive engineers and high level technical personnel of their right to collectively improve their economic position under the law and that, in this effort, the council of the Engineering Institute of Canada is providing the leadership.

Had some of the above factual information been available earlier, it would have been included in the brief which I submitted on behalf of the Canadian Council of the Institute of Radio Engineers.

Sincerely yours,

F. S. HOWES, *Chairman,*
Canadian Council,
Institute of Radio Engineers.

Towards the end of the last meeting we had a notice of motion from Mr. Knowles for leave to revert to consideration of section 4. Mr. Knowles has to attend another important meeting this morning. I thought we could extend the courtesy to him of letting his notice of motion stand until I have arrived at some agreement with him as to the time it should be brought to your attention. Is that agreeable?

Carried.

On the agenda for this morning we have clauses 9, 11, 18 and 19 to reconsider. As the request under each of these sections to allow them to stand was made by Mr. Croll, and as Mr. Croll cannot be here before 11 o'clock for important reasons, I wonder if we could let them stand until a little later this morning.

Mr. LOCKHART: Let us adjourn then.

The CHAIRMAN: Mr. Croll will be here at 11 o'clock. I thought that perhaps we could take the next item, section 23, and revert to the four sections which I have just mentioned a little later this morning. Section 23 has been allowed to stand at the request of the minister, as you will see at page 134 of the record of the proceedings.

Mr. MACINNIS: Page 135.

The CHAIRMAN: Page 134 at the bottom and page 135.

Hon. Mr. MITCHELL: I think I should say about this section that I have talked it over with my people and we do not think it can be improved upon. I think the point that Mr. MacInnis raised was about a possible lockout. That is 23(2).

The CHAIRMAN: Will this section carry?

Mr. ADAMSON: What was the objection that the minister raised?

Hon. Mr. MITCHELL: It was Mr. MacInnis raised the objection as to the possibility of a lockout. Frankly I cannot see that it could happen.

Mr. MACINNIS: If, as appears to be the case, the minister does not think it necessary or is opposed to putting anything in, I have brought it to the attention of the committee, and that is all I can do.

Hon. Mr. MITCHELL: I do not think it requires anything more. I think your fears are largely imaginary.

Mr. GILLIS: Was it not Mr. Croll who asked for this to stand?

Hon. Mr. MITCHELL: No.

The CHAIRMAN: Is there any further discussion?

Mr. GILLIS: Mr. Chairman, it is not section 23 or section 24 which require clarification. It is section 25.

Hon. Mr. MITCHELL: Then let us carry section 23 and go on to section 25.

The CHAIRMAN: Is section 23 carried?

Carried.

Hon. Mr. MITCHELL: Section 25 has been carried.

The CHAIRMAN: Section 25 has been carried. The next item is section 27, referred at page 142 of the record.

Hon. Mr. MITCHELL: That just makes conciliation officers plural. We did that in 16 and 17.

The CHAIRMAN: Would you repeat, Mr. Mitchell, please?

Hon. Mr. MITCHELL: It is section 16. It does not need to be changed there.

The CHAIRMAN: But the motion was made by Mr. Smith to add after the words "conciliation officer" wherever found in the bill the words "conciliation officers."

Mr. MACLEAN: The change is being made in section 16.

Hon. Mr. MITCHELL: If you will go back to section 16 I will move an amendment to section 16(*b*), "and either party thereto requests the minister in writing to instruct one or more conciliation officers."

Mr. BROWN: In line 35 it would be "may instruct one or more conciliation officers."

Hon. Mr. MITCHEL: I have it up here, too.

The CHAIRMAN: Is that the only section where the change has to be made?

Mr. MACINNIS: Mr. Chairman, I think there should be an understanding that the department must have the right, where we have made an amendment in a section in the wording which demands a change in another section, to make such alteration. You cannot bring the bill into the House without that. That will be understood.

The CHAIRMAN: Yes, that is definitely understood, but from the remarks which Mr. Smith made while considering section 27 he intimated that there was a sort of principle involved in the recommendation which he was making. Is it the wish of the committee that we revert to section 16 and consider the motion which the minister has indicated?

Hon. Mr. MITCHELL: That is in the last two lines. "The minister may instruct one or more conciliation officers."

The CHAIRMAN: It is moved by Mr. Mitchell that in subsection B of section 16 in the second last line the words "one or more conciliation officers" be substituted for "a conciliation officer." Is that carried?

Carried.

Mr. MACINNIS: What is the exact phrasing?

Mr. BROWN: "The minister may instruct one or more conciliation officers to confer with the parties", and so on.

Hon. Mr. MITCHELL: Can we understand this, that we will look through the other sections and see that they conform with that change?

Mr. JOHNSTON: Does that comply with Mr. Smith's request?

Hon. Mr. MITCHELL: That is the point he raised.

Mr. JOHNSTON: If you leave it as the minister has indicated, one or more, then one could be the number or more.

Mr. MACINNIS: That is what Mr. Smith wanted. He wanted the plural to be there in case the minister thought it desirable to have more than one.

Mr. JOHNSTON: I think his point was there should be more.

Hon. Mr. MITCHELL: No. As a matter of fact, it is the practice now if a man cannot get along with one side or the other that we pull him out and put another man in.

Mr. GILLIS: You can put two in if necessary.

Hon. Mr. MITCHELL: Sure.

The CHAIRMAN: Section 39.

Mr. MACNAMARA: What about 27?

The CHAIRMAN: Section 27 was carried. On section 39 we have a suggestion by Mr. Gillis which you will find on page 2 of the agenda of the committee which was circulated a meeting or two ago. From what I gather here the suggestion of Mr. Gillis could be implemented better by an amendment to section 45 by substituting the word "board" in the third line of subsection 1 for the words "organization or union." Mr. Gillis has the floor if he has any comment to make.

Mr. GILLIS: Mr. Chairman, all those sections from 39 to 46 deal with the matter of enforcement and I think myself they are the meat of the whole Act, if we want to change labour relations from the picket line to the judicial. I am satisfied with all these sections down to section 45. What I have in mind is that if we pass this Act and we leave the Act as it now stands in the event of a dispute between employer and employee, and the failure of the conciliation machinery provided in the Act, and it is necessary then for either one side or the other to take the matter to court, we are leaving the matter exactly as it is today, where the union either prosecutes the employer or the employer prosecutes the union. In any case in a matter of that kind it generally winds up in an eruption and the whole community suffers. My opinion is that unless the Department of Labour is prepared through their board to enforce this Act when there is an infraction of the Act then we are wasting our time in laying down an Act at all. I think the best people to determine whether there has been an infraction of the Act, or whether one side or the other has been unreasonable, are the men who handle these matters, the national labour relations board. I think all that is necessary, as the chairman points out, in all these sections from 39 to 46 is in line 21 of section 45 to take out the words "organization or union" and substitute the word "board". In my opinion that gives the board the necessary latitude, if the Act has been violated on one side or the other, for proceedings to be instituted in court by the board themselves rather than leaving it as it is today. It is not the rule of law now at all. It is a matter of anarchy. The Seamen's Union is a good example right now of what takes place when it is left to either the union or the employer to observe the laws of the country and carry the matter through the ordinary court channels. You have got a whole industry, particularly in this section of the country, in chaos today, with the employer in this case refusing completely to go along with the labour relations board or to obey the instructions of the Department of Labour, or even bend themselves to the extent of sitting down with a conciliation officer sent in by the Department of Labour. A report has been made which condemns them.

Nevertheless, there is no legal machinery in labour relations to force either the employer or the employee into a legal and reasonable position. There is chaos in that particular industry, and that is what I am trying to avoid in this bill. If we are going to take the trouble to write a legal document bringing the rule of law into labour relations, then I think the board which handles the case and knows the personalties on both sides is in the best position to determine who is reasonable and who is unreasonable and who has committed an infraction of the Act. It is the body which should say, "You are either going to obey the laws of the country as enacted by the House of Commons or it is our prerogative to take you into court and prosecute for an infraction of the law."

It is done in the Income Tax Department. They take proceedings against anyone violating any income tax laws. The provinces do it in connection with the motor vehicles branch. In my opinion, both the employer and the employee going into a national labour relations board, knowing that Board has judicial power to prosecute, will go in there with a much more respectful attitude. It is not a matter of going through the mechanics of talking to each other any more. It is a matter of facing a body which has a law to enforce. The parties will be very careful they do not put themselves in an illegal position.

If a large corporation or a large union wants to take the position one is going to break the other, it is simply a matter of being unreasonable before the Board and taking the matter to court. Then, whichever side has the most money will break the other. In the final analysis, it is the community which suffers. John Public, who stands on the sidelines and watches that sort of thing is going to suffer. I feel very strongly on this subject. Unless we give the Board that power, we are setting up another board for which people will have very little respect. The Board, itself, is a kind of impotent body which listens to arguments here and there, then sits back and says, "You go out and settle it yourselves." I would seriously urge that simple change be made in 45. I think then, so far as the whole section is concerned, from 39 to 45, it is acceptable to me.

Hon. Mr. Mitchell: May I clear up the point raised by Mr. Gillis? I think it may be said that the Industrial Disputes Investigation Act which existed prior to this was possibly the most successful legislation of its kind ever provided. It is all predicated on conciliation and mediation. You cannot have a conciliation board being judge and prosecutor at the same time.

Mr. Gillis: I am not asking for that.

Hon. Mr. Mitchell: Just wait one moment; I have knowledge and I imagine you have, yourself, of what has recently transpired in Australia. There, you have an arbitration court. If the decision of that court—not the decision of the court, sometimes the parties would not wait for the decision of the court. You had a general tie-up in the state of Queensland. I am not expressing an opinion on that legislation. A certain set of conditions existed which, in the wisdom of the labour government there, made them feel it was necessary. Legislation was enacted which I thought never would be passed in a free country. I am offering no criticism because I know nothing about the conditions except what I see in cold print. However, they have had that experience there.

Now, the United States took it away from the labour boards last year because they found it impracticable. I have often used the phrase that, if you are going to make the board the gravy train for prosecutions, the courts of this country will be cluttered with cases of this description. Such an idea is opposed to the whole conception of conciliation in labour relations.

The Act, itself provides for agreement between the parties. A conciliation board can form itself into an arbitration board by agreement, if that is desired. I think it is a fair comment to say that the people who would be opposed more than anyone else to the suggestion you have made would be the responsible labour organizations. I am not saying that the opinions you have just expressed—

Mr. Gillis: The Congress of Labour are not.

Hon. Mr. Mitchell: Well, the Congress,—

Mr. Gillis: Are they not responsible?

Hon. Mr. Mitchell: I am not suggesting they are not. There are a lot of young fellows in the labour movement who are in a hurry. They think you can stop it raining by just passing a law. It just cannot be done.

You have talked of one and I have talked of many others. On the North American continent it is traditional that we should not have compulsory arbitration; that is fundamental with all the labour organizations on this continent. It is the American practice. Take the railway case at the moment, where you have a majority and minority report. The unions, in their wisdom have turned down the majority report. There are other cases where the employers turned down the majority report. I could quote many cases where organizations, and I should say this is probably more true of the organizations than of the employers, have turned down reports of conciliation boards. Even after that has transpired, in my judgment, it is not the thing to rush to the courts. I cannot understand that mentality, when you want to rush off to the courts at every opportunity.

There are extreme cases when you have to do that. However, I think the reasonable conciliation machinery is being developed in this country, and on a much larger scale since the outbreak of war. Even after the breakdown of this conciliation machinery, the minister and his officials can step in and often do step in and resolve the dispute on a conciliatory basis.

I might make another point; I do not think you can have a representative board and make it be judge and prosecutor at the same time. I think the next demand would be for a straight judicial set-up such as they have in Australia. My own view is this; that there is no better way of settling disputes than through the national board and the provincial boards which have existed in every province since the dominion had jurisdiction. I think that can be fairly said of every province in the dominion where you have some kind of industrial organization in existence on a comparatively large scale.

We tried it. You remember Mr. Justice McTague, an able, conscientious chairman who made a great contribution during the war. He held the view a three man board composed of legal gentlemen was better than a representative board. I felt it was the fair thing, since the judge had assumed that responsibility, to give him his way in the composition of that board. That is a matter of history now. I do not think it functioned as well as some people thought it would function.

In this case, you get a chairman; a representative of the running trades; a representative of the Canadian Congress of Labour and of this catholic syndicate. You get a broad cross-section of the nation. On the other side, you get the representatives of the construction industry, the Chamber of Commerce, the Manufacturers' Association and the railroads, on the employer's side.

I believe the leaders of all these groups will admit that it is working reasonably well. I think I mentioned this at one of our previous meetings, I do not know of any resignations because of disagreement with policy since we established that principle. I believe I also mentioned that, in the United States, the life of a chairman of a board has been about five months. I would rather stay with a system our people understand and, for that reason, I do not want this language changed any more than we can possibly help. The trades' unions and the employers in the provinces know the approach and know the language. If I thought we could have legislation which would obviate industrial disputes, naturally I would say let us have it. Human beings being what they are, I think this is as good a piece of legislation as exists on the North American continent today.

I should like to say to you quite frankly that I would not deny any individual in this country the right to go to the courts and have men with ability in this judicial field decide whether, in a given situation, there has been a breach of the law. To place it in the hands of people who have not had experience in that field, would be a bad move. I am sorry I cannot accept your suggestion.

Mr. Gillis: Your whole argument is in favour of it.

Mr. McIvor: I was just thinking, if Mr. Gillis were the Minister of Labour, would he be willing to put in this amendment?

Mr. Gillis: The answer is definitely yes.

Mr. McIvor: When you appoint a conciliation board of three members and they give their decision, you, as Minister of Labour, would say that decision is fair. If either side does not agree, then I do not think the board should be responsible for instituting action because the board has already given its opinion and will be biased in so far as any other decision is concerned. I believe those who did not get what they thought fair and resorted to the courts should pay the bill, not the citizens of Canada.

Mr. Gillis: Do you hold that view in so far as income tax and other laws you now enforce are concerned?

Mr. McIvor: I do not like this amendment.

Mr. MacInnis: I agree, Mr. Chairman, that this is a matter about which, perhaps, we cannot be dogmatic. However, I think we should consider the matter carefully because the question we have before us is not the one to which Mr. McIvor referred at all, as to the enforcement of a conciliation board award. I do not think that enters into this question at all. The question concerns the refusal of either one or the other of the parties to accept the provisions of this Act. If either one or the other refuses to accept the law, who is responsible for the enforcement of the law?

The principle put forth by the minister in the Act is that, if the law is broken it is no concern of the government. It is only the concern of the parties to the dispute. That is the position taken. Let me point out the underlying basis of this law. This is not a law which is made for employers and employees solely to try to get them to resolve their difficulties. This is a law which is made because of the recognition that the community, the nation, is concerned with industrial relations. The law is made so that the community will not be destroyed in the struggle between employers and employees. Fundamentally, that is the purpose of this law.

Now then, the position of employers and employees is very different in its impact on the community or it may be very different. If a sufficient number of employees refuses to accept an award or as has already been done, ignores the whole thing, then they would withdraw their labour from the community. They would disrupt the economy of the country. Does anyone take the position, then, it is the duty of the employer to take these employees to court and enforce the law? Surely, that is not a reasonable law taking into consideration the basis of the legislation before us.

On the other hand, if an employer refuses to recognize the law at all and could get sufficient workers to carry on the operations in which he is engaged, then the community is not particularly affected at all. Consequently, the people will say, "Why should we take these people to court or bring these fellows to time?"

The minister referred to the Australian situation. In Australia they have had compulsory arbitration for years. When I say compulsory arbitration I do not mean compulsory only to bring a case to an arbitration court, but compulsory in the acceptance of the arbitration court's award. I am free to admit that sometimes the award is not accepted, but nevertheless it has worked fairly well in the past. The situation that has arisen recently in Queensland is more of a political situation than that of an industrial dispute. Let us take the case to which Mr. Gillis referred, that of the steamship companies. These steamship companies just refused to have anything to do with the board the minister has set up. As a matter of fact, my impression is that they not only refused to have anything to do with such boards, but they challenge the minister's right under the law to establish these boards, and because they can get enough workers to carry on their business, the country does not hear very much about it. If one employer can get away with that sort of thing without prosecution by this government what will happen? I should like the members of this committee who have not already done so to read the report made by Mr. Brockington and Mr. McNeish to the minister, and if they can find any strong language of condemnation in that report by these two outstanding Canadian citizens I should like to see it. So, a violation of this Act is not solely a matter of concern to the parties involved. A violation of this statute effects the people of Canada, and therefore the enforcement of the Act should be properly carried out.

Mr. ADAMSON: With regard to the strike in Detroit in the United States, has not the government stepped in and prosecuted the union? What is happening there?

Hon. Mr. MITCHELL: Only yesterday I was reading in the New York *Times* about that strike. I understand that the Governor of Michigan is contemplating looking into the strike on a legal basis. They have a state law which he feels is being contravened by this organization.

Mr. ADAMSON: If we accept this amendment would it not bring our law into line with the state law in Michigan?

Hon. Mr. MITCHELL: When it comes to a question of constitutionality I think the government has a direct responsibility, and while I cannot speak for the government I shall certainly defend the constitutionality of this legislation in the courts. When the government gets into prosecution as such, people always take the easiest way out and say, "Why should we worry, let the government prosecute". It is just like the Appeal Board situation during the war. Appeals went from one board to another, and the first board did not always assume the responsibility it should have. My judgment is that the loser would be the working people themselves, if this idea ever came into effect. We have had this kind of legislation for forty years and we have only had eighteen prosecutions. Mr. Chairman, I feel the whole thing is a matter of conciliation. There are bound to be exceptions to every rule.

Mr. TIMMINS: I want to say that I see eighteen- and nineteen-year old boys working outside my office and they do not know what the Seamen's Union situation is all about. I met this fellow Dewar Ferguson, and he told me what he is going to do. He is running the strike. He is the union. You should know perfectly well that the whole thing is dominated by communists and that they are making the rest of us—fellows like you who know the trade union movement—look like monkeys over this situation.

Mr. GILLIS: If you are talking to me, I just want to say that Mr. Brockington, a government-appointed official, definitely stated to the Minister of Labour that the employers are unreasonable and that they refuse to obey the laws of this country.

Mr. MACINNIS: I think that Mr. Timmins, who I understand is a good lawyer, is missing the point here altogether. If an employer can refuse today to negotiate with his union because there are communists in it, another employer can refuse tomorrow to negotiate because there are conservatives in it. You think that is something that might happen, but the wheel turns very fast in the present world situation, and it is none of the company's business what the political leanings of the employees are. That, I assume, is the situation in Canada.

Mr. TIMMINS: We have had three or four years experience with the union and we know what we are dealing with.

Mr. DICKEY: I do not want to get into any argument that has developed into a political question of the Canadian Seamen's Union, but there are two or three brief observations I should like to make on the amendment that has been put forth by Mr. Gillis. It seems to me that we are not quite fair on one point. That is, that there has been some demand for the government to have power to prosecute under this Act. Now, that is not what this amendment calls for. The amendment calls for the board to have, not only the power but the responsibility to prosecute under this Act. I think that the point which the minister has raised is absolutely fundamental, and that the whole concept of this legislation is to set up a board as a conciliatory. To add to that the absolutely foreign element that the board should prosecute one or the other of the parties who appear before it for conciliation, will be, I submit, to completely destroy the whole purpose of this legislation.

Now, with respect to Mr. Gillis, I cannot agree with him on the various parallels which he has drawn between income tax legislation and other legislation that the government enforces. I do not think that anybody would consider that there is any element of conciliation in income tax legislation or any legislation relating to national revenue. It is a completely different situation where the government passes certain laws applicable to the raising of revenue and where certain persons have been found to have evaded that law. In such a case it is quite apparent that the government, as its own tax gatherer, is the only party who is interested in prosecuting. This is the kind of legislation where the parties are involved, and where two parties have definite interest, and we must remember the various functions of government. One of these functions is the judicial function, and the nation provides courts to carry out the judicial function. This legislation sets out very clearly the offences for which, if somebody commits them, he will be brought before the courts. I think it should be left to the people who are aggrieved to bring the other party before the courts and to conduct any prosecution themselves.

The last little point which I should like to make, which may not be considered by some to be of importance, but I think it is of importance, is that if we put this power in the hands of the board to bring the law breaker before the courts, is the board to conduct that prosecution? Is the board to have the power to conduct the prosecution or do they have to go to the party who feels they are aggrieved and say, "Now, we are going to prosecute such and such a person. How do you want us to prosecute, and who do you want to represent the board?" I think that would be an impossible situation. If we give this power to the board we must give it to them fully, so that they may conduct the prosecution also. It is quite conceivable that a labour union or an employer might make a complaint to the board and ask for a prosecution, and the board might proceed to prosecute, and if the result was not in accord with the wishes of the person who thought he was aggrieved, he might turn around and say, "We have not received satisfaction from the board. This case was not properly prosecuted, and we want to prosecute ourselves."

Mr. Adamson: Then there is the other question that if the board is not unanimous what will happen? If the board is not unanimous in its decision what are you going to do?

Mr. MacInnis: May I just ask Mr. Dickey a question. He took the position that the board cannot enter into this, but let us make it clear that the prosecution cannot be laid without the consent of the board. Now, then, if the board decides that there is no case they will not give permission to prosecute.

Mr. Adamson: The minister does that.

Mr. MacInnis: If I remember rightly I think it is the board that does that. In the present case the board has given the seamen's union authority to prosecute. If the board can say that there is no case, why should the board not take the case?

Mr. Dickey: All I have to say is that I have given my reasons why I consider that the board should not be the one to take that case to court. It destroys the fundamental reason of the board.

Mr. MacInnis: Why should the board decide on the prosecution of a case?

Mr. Dickey: The minister does that.

Mr. Gillis: In my opinion Mr. Dickey has put a completely erroneous conception on the fundamentals of this bill. He says that this bill is predicated on conciliation. It is not. If it is, why is there written in here these penalties and all the things that will happen to people who might commit an infraction of the Act? It is definitely laid down and the law must be enforced. The minister takes the United States as an example, but I do not want to get into the position they are in in that country. That is exactly what I am trying to avoid. I think the government, the minister, and the board have been placed in a ridiculous position by the seamen's union dispute. If I were the Minister of Labour tomorrow, I would want to have some authority to get out of that sort of thing. I would not want to occupy a position where I could be made a fool of by anybody, as has been done in this case. It is quite all right for the members here to argue, "I do not want to take the right from any individual of having his day in court" but that right is taken from a good many individuals in this country because they cannot afford to go to court. The fact cannot be disputed or denied. There are many small unions in this country who may not get the benefit of this Act because the employers concerned are big and tough. It is very costly to take an industrial dispute into the courts of this country.

Mr. Adamson: Do you know of any situation of that kind?

Mr. Gillis: Yes, all kinds of them. I would advise you to keep your eye on the seamen's union. You have another dispute down here in Ontario, the Bertram Company.

Mr. Croll: Where?

Mr. Gillis: Hamilton, a small little union that tried to follow out the laws of the country in the matter of wage negotiations, and the employer locks the plant up and goes down to Florida for a vacation, and the community suffers. That union cannot have its day in court because it cannot afford it. What I am trying to do in this case is that I want to point out that I do not think anybody is in a better position to decide whether court action is necessary than the board to which we give authority to take evidence and assess it. It hears both sides of it.

Mr. Johnston: They have to give consent now.

Mr. Gillis: Yes, but what I am trying to do here is to give the board power if they so desire, if in their opinion they think the matter should be taken to the courts of the country. Then the board has at least the authority to do that. I think it will create respect for the board, as I said before, by both parties. If I could accept the statement that everyone has his day in court I would say, "sure, let it go as it is", but I know that is not possible. If we are not going to enforce the Act, as I said before, we are wasting our time in passing it. The Minister of Labour is in the position today where, if a dispute develops and it reaches an impasse before the board, he can say, "It is no longer our responsibility. You two fellows go out and fight it out in court". Then we sit it out. I know who wins in that case. I know who can sit out longest, and it is not the employee. As Mr. MacInnis pointed out it is a matter of protecting the whole public, the people of Canada, because in this country and in the United States today you have got a false prosperity but there is a time coming when you are going to have a lot of labour disputes in this country, and I should like to see someone responsible, someone in a ministerial capacity, or a judicial board of some kind, with at least the authority to see that the laws of this country are going to be enforced, and not be made a fool of as we are at the present time in the seamen's dispute. If we do not want to accept the responsibility as far as I am concerned we are wasting our time in discussing the Act.

Hon. Mr. MITCHELL: Let me get this thought over to you. I think I have expressed the opinion before that I do not believe the labour department should turn itself into a policeman.

Mr. GILLIS: I am not asking you to.

Hon. Mr. MITCHELL: That is all right, but wait a minute. I do not think that is its function. I believe that public opinion will decide in the long run. The whole basis of this legislation is let the sun shine in. Perhaps I should not say this, but I am going to say it anyway. The labour department has probably spent more money on the seamen's union than any other organization in the history of this country. What do you get? You get a split in the organization. You have Sullivan, who admitted he was a communist—he did not admit it to me—and you have people there fighting amongst themselves. It is just like a family fight. It is all right to place the child on my doorstep, but I am not responsible for Sullivan and neither is this government. I am not responsible for the man Mr. Timmins mentioned this morning. Public opinion will in the long run, as it always does, be the factor that will decide the justice of these things. That is the whole basis of the idea of the Act. We know of hundreds of disputes where one side or the other has turned down the report of the board and the department has moved in and settled it to the satisfaction of one or the other. I do not think there is any substitution for suffering for your sins. Even the law cannot be a substitute for suffering for your sins. I think if you make a darn fool of yourself you should suffer accordingly. It is the greatest teacher in the world. I know when I had the responsibility of setting up war labour boards in this country I felt that sooner or later one might be able to establish a system right across this country for the adjudication of wage disputes through the instrumentality of these labour boards, but as you all know both sides were opposed, both employer and employee. It was a part of the anti-inflation campaign, and I think we did reasonably well. When I say "we" I mean everybody.

My view of industrial disputes is that first of all you have got to sit down and look at the economics of the industry. Sometimes the employer is wrong and sometimes the employee is wrong, and if you do not use good common sense, which cannot be substituted for by law, either one or the other gets a licking. I believe this kind of legislation is far better than the legislation they have got in the United States at the present time, and I am offering no criticism of that legislation, but as I have explained before my whole approach to labour disputes has been that I was raised in the school where we did not want too much law. I think the farther you stay away from courts—and give this advice to both sides—the better it is for everybody concerned. The amendment as suggested by you, Mr. Gillis, I think would destroy the very basis of this legislation. I remember reading about Napoleon who had a price control system in France during the Napoleonic wars, and he wound up in the position where he had to make every janitor in Paris a policeman. He could not get enough policemen to watch the people there to keep it on an even keel. This idea of thinking that all you have got to do is appoint enough policemen and you will have a good time and everybody will be satisfied is all wrong. I have never accepted that position and I know my good friend, Mr. Gillis, does not either. Do not forget that the springboard or plank to that situation—and I think you are saying it unconsciously—in any country is the suggestion you are making this morning.

Mr. GILLIS: I am trying to get away from anarchy.

Hon. Mr. MITCHELL: It just depends on what you call anarchy. You know that we used to think the British trade union movement was the most powerful in history of the world. Actually the German was numerically and every other way. As I said the other day they got so close to the state that when Hitler got his fingers on the ammunition they were no longer free men. They were servants of the state. It is a powerful thing when you can say to a fellow, "if you do not behave you will not wake up tomorrow morning." I have heard that argument in the British trade union congress in 1933. It is the kind of ideology we get in some parts of the continent of Europe and in Asia.

I think section 57 of the bill gives me all the power that is necessary, and I say this sincerely to you that I would not like to be placed in the position of having to prosecute for the employer or the employee.

Mr. Croll: Section 57 does not give you the power to prosecute.

Hon. Mr. Mitchell: I do not want that power. I do not want the power to prosecute anybody. Let them prosecute each other. I would rather settle the thing by conciliation.

Mr. MacInnis: May I ask the minister one question? We are dealing now with the board. I have already said I have an open mind on this matter, although I am inclined to agree with the suggestion made by Mr. Gillis, but section 43 at least puts some obligation on the board to do certain things. I want to know how the board is going to get compliance with the powers that have been given to it here. Let me read it.

> (1) Where the minister receives a complaint in writing from a party to collective bargaining that any other party to such collective bargaining has failed to comply with paragraph (*a*) of section 14 of this Act or with paragraph (*a*) of section 15 of this Act, he may refer the same to the board.
>
> (2) Where a complaint from a party to collective bargaining is referred to the board pursuant to subsection 1 of this section, the board shall inquire into the complaint and may dismiss the complaint or may make an order requiring any party to such collective bargaining to do such things as in the opinion of the board are necessary to secure compliance with paragraph (*a*) of section 14 or paragraph (*a*) of section 15 of this Act.

That is compliance with bargaining. The case we are dealing with is where an employer refuses to bargain.

> (3) Every employer, employers' organization, trade union or other person in respect of whom an order is made under this section, shall comply with such order.

If the parties do not comply, as the case is now, what action is open to the board? Obviously the board must in that instance use the sanctions of the court, the sanctions of the law, because no other sanction can bring an organization to heel in this respect except that sanction.

Mr. Sinclair: Mr. Chairman, when I first heard Mr. Gillis' proposition I thought it was probably a very good thing because, as he points out, there are occasions when small unions obviously have not got funds to wage a successful prosecution, even after getting consent of the board, against a large and wealthy employer. If all these prosecutions were to be by unions against employers then I would say this is probably a good thing, but there undoubtedly will be cases where a union breaks the law, a union, for example, led by the communists, as out on the west coast several unions are. In that case if the labour board gives consent—and as far as the average working man is concerned the labour board is the whole labour department—and they then come to court and prosecute the union you know the cry which will be raised across the country by the Murphys and the Dewars, "Here is a fascist government striking at the working man."

It is all very well to say that there will not be much attention paid to that, but three or four such prosecutions under such a law will build up in the minds of the average working man, who does not follow these things too closely, the feeling that the labour department is the enemy of the working man because they are prosecuting working men. I say when that situation occurs that the entire value of the labour department is gone. I agree with the minister that the best thing to do is to keep the Department of Labour and the board out of such prosecutions and leave the prosecutions, once the board has approved, to the ordinary processes of law, where the aggrieved party prosecutes the party who committed the offence.

Mr. MacInnis: Would the minister answer my question? How is the board going to compel compliance with the law under section 43, on the refusal of either party to a dispute to take part in conciliation proceedings before the board?

Hon. Mr. Mitchell: Read section 44, too.

Mr. MacInnis: Section 43 is quite clear to me.

Hon. Mr. Mitchell: I will tell you what has been the general practice there up to now. We did not have a section like that under 1003.

Mr. Croll: Like section 43?

Hon. Mr. Mitchell: Yes.

Mr. Croll: Just the first part.

Hon. Mr. Mitchell: Yes, but the whole thing is new. Section 44 does give me power to put in an industrial disputes inquiry commissioner, and I have often done that. As a matter of fact, I think it worked better than the conciliation board.

Mr. MacInnis: As it appears to me the proposed section 44 over-rides the provisions of section 43. Section 44 reads:

> 44. (1) A person claiming to be aggrieved because of an alleged violation of any of the provisions of this Act may make a complaint in writing to the minister,

and so on, but section 43 deals exclusively with the matter of conciliation. It lays down the basis for compliance with the request by the board that the parties shall conciliate, and I think it is the pertinent section to the matter we are discussing.

Mr. Johnston: I am not quite clear on section 43 after what Mr. MacInnis has said. Section 43 (3) reads:

> Every employer, employers' organization, trade union or other person in respect of whom an order is made under this section, shall comply with such order.

I should like to ask the minister what the procedure there would be. If the company was at fault would the union go to the minister and get consent to prosecute?

Mr. Croll: The last subsection of that section?

Mr. Johnston: Yes. Suppose they do not comply. What is the procedure then?

Hon. Mr. Mitchell: Then there is a penalty.

Mr. Johnston: Who imposes the penalty?

Hon. Mr. Mitchell: The court.

Mr. MacInnis: Who takes them to court? The board does not.

Hon. Mr. Mitchell: If you will read these sections together, if people will not sit down one with another and bargain collectively then under section 44 I have the power to put in a commissioner who makes a report to myself before I give leave to prosecute.

Mr. Johnston: When you give leave to prosecute to either side then they must go ahead and do the prosecuting?

Hon. Mr. MITCHELL: I can say this to you. You have to deal with so many cases in a department like mine, but if you remember, during the war we had what we called 4020 which gave me power to put in a commissioner. If a man was discharged for union activity and the commissioner so decided all I had to do was to make an order and then the man had to be put back to work. That is all right under war conditions.

Mr. JOHNSTON: Suppose they do not comply?

Hon. Mr. MITCHELL: It could work either way. I used that as an example. What we provided this clause for was to be able to put in a commissioner who would give me the facts, and the minister will decide whether or not leave to prosecute shall be given. I would think if the commissioner's report was on either one side or the other it would have a powerful influence when the matter was taken before the courts by either the employer or the employees' organization.

Mr. JOHNSTON: You would only give consent to one of the parties to go to court. I understand that is what you do when you get the evidence from the commissioner?

Hon. Mr. MITCHELL: Oh yes, I thought I made that clear.

Mr. JOHNSTON: You would give consent to prosecute?

Hon. Mr. MITCHELL: Yes.

Mr. JOHNSTON: Either the union or the company would have to go ahead and institute the prosecution.

Hon. Mr. MITCHELL: I can say this to you as to this whole prosecution business, that I suppose if I were more of a politician I would say let the board do it, why should you not put the child on the doorstep of somebody else, but I have felt in my judgment, rightly or wrongly, that was a responsibility of the minister. What you have got to make up your mind about is that you do not permit frivolous prosecutions that will clutter up the whole machinery of labour conciliation and administration. These people would come to me more or less as the end of the road before going to court and I could say to one side or the other, "I think I will have to give leave to prosecute." Once you have made that decision on many occasions one side or the other would give way and have a settlement.

When I was industrial disputes commissioner, I sat on many cases similar to that. I would say to one side or the other, "You are quite wrong. Now, in my judgment, the best thing for you to do is to make a settlement." Of course, it is not quite as easy as that. I am just using short phrases. I may say we sat on 53 disputes and only one went sour. I do not think you can substitute putting people in jail for commonsense and decency; that is my whole approach to this matter.

I am not and I never have been scared. I think I never will be frightened of these over-night revolutionaries because they get up and say I should be fired. It is so ridiculous. You cannot do your duty if you are going to listen to every half-wit who comes down the pike. Your judgment is swayed. The only approach possible is to try and be fair and decent to both sides. You cannot substitute the law for that.

Mr. MACINNIS: I want to know what section 43 means. If it does not mean anything, why have it here? If it means something, then let us know exactly what it means. It outlines the duties and functions of the board. Let me read subsection (2) of it again and I shall show you just what this section requires the board to do.

> Where a complaint from a party to collective bargaining is referred to the board pursuant to subsection (1) of this section, the board shall enquire into the complaint and may dismiss the complaint—

If the board does not dismiss the complaint,

> —the board shall—

Mr. Croll: May.

Mr. MacInnis:

> —or may make an order requiring any party to such collective bargaining to do certain things as in the opinion of the board are necessary to secure compliance with paragraph (*a*) of section 14 or paragraph (*a*) of section 15 of this Act.

Now, paragraph (*a*) of subsection 14 and paragraph (*a*) section 15, requires that they bargain. This section has some value or it has not. If this section has not any value, if it does not mean a darn thing, let us not clutter up the statute with it. If it means something, let us know what it means. This section stands by itself and does not refer to any other sections except 14 and 15.

Mr. Croll: Mr. Chairman, I am sorry, but I did not get the benefit of all the observations which were made. However, on reading the section—what did you say Mr. MacNamara?

Mr. MacNamara: Look at section 40, part (3).

Mr. Croll: Yes, that is exactly what I had before me.

Mr. MacInnis: Who is going to enforce the law in case of an offence?

Mr. Croll: Let us see what happens. Section 40, subsection (3) refers to an offence similar to the offence, let us say, which took place in the Seamen's strike. It is an unfair labour practice. They refused to bargain collectively; that is the offence. What does this section say?

> 40, subsection (3): Every person, trade union and employers' organization who contrary to this Act refuses or neglects to comply with any order of a court, judge or magistrate made under this section or any lawful order of the board is guilty of an offence—

Mr. MacInnis: What section is that?

Mr. Croll: Section 40, subsection (3).

> —is guilty of an offence and liable on summary conviction to a fine not exceeding $50 for each day during which such refusal or failure continues.

Let me ask this question. Was that section in P.C. 1003?

Mr. MacNamara: No.

Mr. Croll: That is the point I want to make. It is new to me. In my opinion, if we pass this Act the problem we have here solves itself. I think we ought to leave it alone. I remember very well, and some of the members here will remember also that, during the last hearing we had before us some gentlemen from the Manufacturers' Association. I asked a question of one of them, "Could a determined employer break a union by firing the leaders?" He thought the question over and he said, "Yes, by paying the fines in each case and continuing to pay the fines and not reinstating the man." My interpretation of section 40 (3) is that in any strike which comes within the four corners of this Act, the matter is left up to the board and not to us.

Mr. MacInnis: That is exactly the point we have been arguing.

Mr. Croll: I do not think this is the place for you to get an answer. After all, you allowed the lawyers to come in and practise. We will interpret this for you in due course, after you pay the fee.

Mr. MacInnis: I interpret it myself.

Mr. Croll: I agree with you. The only difference is I can charge a fee for this, you cannot. I agree with this and the deputy minister agrees. It is a new section, and if we leave it alone, I think we will find the board has to carry the thing through.

Mr. MacInnis: It has already been carried, but I do not think it means what it says.

Mr. Lockhart: All we are trying to decide now is whether or not this phraseology suggested by Mr. Gillis is to be included. I believe we have had plenty of discussion here this morning on this matter and we ought to decide one way or the other now.

Mr. Gillis: I am not satisfied we have had plenty of discussion.

Mr. Croll: Do you not think that is what it means?

Mr. Gillis: I think you are wrong and that is why I am speaking again. All subsection (3) of section 40 does is to empower the board to determine that someone has been wrong. After that determination has been made, the board is finished with it. Then, either the employer or the employee has to go to court.

Mr. MacNamara: They could issue an order.

Mr. Gillis: They have not the authority, so far as my reading of it is concerned. All this board can say is that a certain party is wrong and the parties have to go to court with it. All I am asking is that, in section 45, you merely write in the word "board". The part of section 45 to which I am referring definitely states that the enforcement of the Act must be done by employers or employees. I merely want to write the word "board" in there to give the section the effect Mr. Croll suggests section 40, subsection (3) might have. When the board begins to function, I am sure the National Labour Relations Board as such, will have no power to refer the matter to the courts.

Hon. Mr. Mitchell: The other day, you were complaining—

Mr. Gillis: I never complain.

Hon. Mr. Mitchell: —that there was no responsibility on the minister.

Mr. Gillis: No, I do not think I said that. I think you really have dictatorial powers.

Hon. Mr. Mitchell: I thought you said that. However, it is rather nice to get up on orders of the day and say we have given leave to prosecute. I have no objection to that. It may be yourself, you know. Probably it should be done by the board to relieve the House of Commons of the responsibility.

Mr. Gillis: The board is still the creature of the House of Commons.

Hon. Mr. Mitchell: A good many other boards are, too. They have had the daylights panned out of them and were abolished. Then, people said they wished the boards were back again. I think the minister should be responsible for leave to prosecute. He has to make up his mind whether it is frivolous or otherwise. Having received a recommendation from a board or commission appointed by himself, a minister could not do anything else but give leave to prosecute.

Mr. Gillis: To whom are you going to give leave?

Hon. Mr. Mitchell: To either one side or the other.

Mr. Gillis: But you wash your hands of it.

Hon. Mr. Mitchell: I am opposed to setting up any star chamber.

Mr. Gillis: This is no star chamber. You are being big enough to enforce your own legislation.

The Chairman: Your motion, if carried, would have some effect on each section referring to enforcement; that is, from section 39 to section 47. I wonder if it could be of a more general nature. For instance, would you be agreeable to something worded this way: That the responsibility for the enforcement of the Act be placed on the Canadian Labour Relations Board and not on the employer or the trade union as provided for more specifically in section 45, subsection (1)?

Mr. Gillis: That would be perfectly satisfactory to me.

Mr. Brown: I would call your attention to the fact it is not section 45 which is involved, it is section 46.

Mr. Gillis: No, I think it is section 45.

Mr. Brown: All section 45 does is to say that a prosecution for an offence under this Act may be brought against an employers' organization or a trade union and in the name of the organization or union—. In other words, it may be brought against that union in the name of the trade union.

Mr. Gillis: Or in the name of the board which gives the board authority to institute proceedings.

Mr. Brown: No, it is a prosecution against the trade union taken in the name of the trade union. In other words, the union is the party against whom the prosecution is taken.

Mr. Gillis: I want the board to be able to take proceedings against either party.

Mr. Croll: I think Mr. Brown is right.

The Chairman: Would you be satisfied to delete from the draft motion I have submitted to you any reference to any section?

Mr. Gillis: Yes, if you could write this into the Act somewhere, I would be satisfied.

The Chairman: We would have this motion, then.

> That the responsibility for the enforcement of the Act to be placed on the Canada Labour Relations Board and not on the employer or the trade union.

Mr. Croll: That is very wide.

Mr. Gillis: It is specific. There would be no quibbling with that.

The Chairman: Is that the motion you wish placed before the committee?

Mr. Gillis: Yes.

The Chairman: Are you ready for the question? All those in favour of the motion will please raise their hands? Those against?

The motion is defeated.

Now, we come to section 48. Before we reach that, may I say that section 39 is still standing. Shall section 39, as it is, carry?

Carried.

Mr. Adamson: Mr. Chairman, with regard to section 48 this is to be carried as amended by adding the words, "registered mail". Mr. Smith's motion has been carried.

The Chairman: I just called the section to see whether the minister or Mr. Brown had something to say as to the manner in which the motion we have carried could be implemented?

Mr. Brown: Mr. Chairman, you just substitute the words, "by registered mail" for the words "through His Majesty's mails," and that would cover it.

The Chairman: Shall it carry?

Carried.

Mr. Dickey: Was section 44 carried?

The Chairman: It was carried subject to the principle involved in Mr. Gillis' motion.

Section 53; you will find a reference to it at pages 183 and 184 of the minutes and proceedings.

Hon. Mr. Mitchell: I think it was Mr. Smith asked that that be amended. We drafted this,

> Any work, undertaking or business, that is within the legislative authority of the parliament of Canada including, but not so as to restrict the generality of the foregoing—

Mr. Croll: All you did was reverse it.

Hon. Mr. Mitchell: That is right. That is what you wanted and we have no objection to it.

Mr. Adamson: Section (*g*) stands as it is?

Mr. Johnston: Is this a new section?

Hon. Mr. Mitchell: No, it is an amendment to the first part.

Mr. Croll: How will it read?

The Chairman: It is moved by Hon. Mr. Mitchell that the following words in section 53,

> —the following works, undertakings or businesses, namely,—

be deleted and the following substituted therefor:

> —any work, undertaking or business that is within the legislative authority of the Parliament of Canada including, but not so as to restrict the generality of the foregoing—

Mr. Croll: Then read clause (*h*); that is substituted for clause (*a*).

The Chairman: I assume that these subsections (*a*) to (*h*) are only a recital of what is found in the B.N.A. Act?

Mr. Sinclair: Clause (*g*) takes in the Hudson Bay Mine on the Saskatchewan-Manitoba boundary.

Mr. Adamson: Let us see what it does before we vote on this. I agree that some simplification should be made to this long list. This amendment would strike out clauses (*a*), (*b*), (*c*), (*d*) and (*e*)—

Mr. Sinclair: No.

The Chairman: We are just deleting the short line in section 53.

Mr. Lockhart: Will you read it again, Mr. Chairman?

The Chairman: I will read the first three lines of section 53 as they will be after the amendment is carried, if it is carried.

> 53. Part I of this Act shall apply in respect to employees who are employed upon or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada including, but not so as to restrict the generality of the foregoing—

And then the subsections remain as they are.

Shall the motion carry?

Carried.

Shall section 53 as amended carry?

Carried.

Now, section 54.

Mr. Adamson: Sections 54 and 55 are still standing?

The Chairman: 54 and 55 are standing. Do you wish to discuss them together?

Mr. Croll: Mr. Chairman, I made the objection to that originally on the basis that it gave the governor in council a great deal of power. For instance, during the war the National Harbours Board was excluded.

Some Hon. Member: Included.

Mr. Croll: I am informed that the National Harbours Board was one that was included, but my point is that authority is given to exclude Crown companies. I do not see any reason for that. It gives them authority, in fact, under certain circumstances, to almost nullify the Act by excluding anyone they like. My point is that exclusion is a matter of legislation and should not be in the hands of the governor in council. This is an Act passed by the parliament of Canada and should so remain. I move to delete it.

Mr. GILLIS: I second your motion.

Hon. Mr. MITCHELL: Before this is deleted may I say something about the principle involved. There are certain things for which the government must take responsibility, such as the plant at Chalk River. Some time when parliament is not in session you cannot tell who might get into Chalk River. Then you have such bodies as the National Film Board and the National Research Council, which at the moment must be excluded from the operation of this section because their employees are civil servants. I think this had better stand as it is.

Some HON. MEMBERS: Carried.

Mr. GILLIS: On division.

The CHAIRMAN: Section 55.

Carried.

Mr. GILLIS: On division.

The CHAIRMAN: Section 67. The committee expressed the desire of letting this section stand while we were considering clause (*b*), subsection 1 of section 67. A reference in the Minutes of Proceedings is that it may be found on page 199. Mr. Croll will have the floor on section 67.

Mr. CROLL: If the other falls, section 67 falls also.

The CHAIRMAN: Does section 67 carry?

Carried.

Now, gentlemen, we revert to section 9.

Mr. CROLL: Mr. Chairman, my objection to section 9 was made at the time we were previously discussing it and I asked the minister the following question:

> What happens in the case of a union that is certified and is later found to be a company union?

My submission is that there is nothing in the Act at all that gives anyone any authority to deal with it. I have looked through the Act again since then, and so I am offering to the committee this amendment: That section 9 have a subsection (6) added to read as follows:

> That the Canadian Labour Relations Board shall have power to require an employer to dis-establish an employer formed, influenced or dominated organization.

The purpose of this amendment is to drive out of existence all company unions. We have already passed on the principle, but that is the method of doing it:

> That the Canadian Labour Relations Board shall have power to require an employer to dis-establish an employer formed, influenced or dominated organization.

That is a matter for the Board to do. It is something that is necessary, and, as I say, there is no provision in the Act for doing it at the present time.

Mr. JOHNSTON: Mr. Croll, is your point that a union could be properly formed and after it was so formed it could come under the domination of the company?

Mr. CROLL: I am not in a position to say when it might come under the domination of the company, but if the Board were to find out that it did become a company union it could do something about it.

Mr. JOHNSTON: Have you ever heard of any such cases?

Mr. CROLL: Yes.

Hon. Mr. MITCHELL: I can say that I was through that sort of thing myself a good many years ago. When I came back from the last war, the firm for which I worked had a company union.

Mr. MacInnis: You do not like it?

Hon. Mr. Mitchell: I shall tell you about it. I ran against the superintendent of the company for a place on the executive of the company union, and from then on it was a trade union. You have to be careful in a situation of that sort, where you are discussing the formation of a union. In many instances the men go to the employer and the employer assists them in forming a trade union. In this connection you might start a first-class jurisdictional dispute because another movement might come along and say that an employer helped form the local union of, say, mine workers, and that is illegal under the Act. I do not think that Mr. Croll's suggestion is necessary, because the Board, after listening to the evidence, cannot give bargaining rights to a company union.

Mr. Lockhart: I would suggest to Mr. Croll that he look at section 61.

Mr. Croll: What I am saying is that if it is found at some later time that the union is a company dominated one, that the Board should have some authority to deal with the situation.

Mr. Dickey: Do you suggest that the Board might make a mistake and find it out later on?

Mr. Croll: I intended to use the word "fraud" in there, but I thought it was a rather harsh word to use. I do not see the word "fraud" used throughout the whole Act and therefore I put in the words "influenced or dominated." However, I am not sticking on this form. What does section 61 say?

Some Hon. Members: Clause 2.

Mr. MacInnis: I believe that Mr. Croll is asking that they give an order that a union may be disbanded, if it is found out that they are a company dominated union.

Mr. Croll: I see here that it is a matter of certification, but I went further than that and said to dis-establish. I said, "to dis-establish an employer formed, influenced or dominated organization."

Mr. MacInnis: Would that mean that it would throw them out and they would have to start all over again?

Mr. Croll: No.

Mr. Johnston: That is what you do in the certification.

Mr. Croll: I am talking about dis-establishment.

Mr. MacInnis: As I see it they cannot bargain under this Act unless they are certified. They are not an organization under this Act for bargaining purposes unless they are certified under this Act.

Hon. Mr. Mitchell: The point is, how can we say to a certain group of people that they cannot get together and form an organization? We have not yet said that to the communist party. Some people do not like Free Masons and some do not like Knights of Columbus, or what have you. I do not know what would happen if you were to tell people that they could not associate, one with another, under the law.

Mr. MacInnis: Might I ask Mr. Croll whether perhaps he has not got his amendment in the wrong place? Should his amendment not be to section 61 instead of section 9, so that it would come under the powers for all the board?

Mr. Croll: I stood section 9, and I did not stand section 61. I originally intended to put it in there.

Mr. Lockhart: Is not what Mr. Croll is suggesting included in section 61; that is, to all intent and purposes?

Mr. Dickey: I think Mr. Lockhart is right except that there is the important element included in Mr. Croll's motion, that the Board have the power to dis-establish the union.

Hon. Mr. MITCHELL: With the set-up of the Board as it is where represensatives of the employers and employees are both heard, I think it could be decided whether an organization is a company union or not. I think you have all the necessary power to deal with company unions in section 9 as it stands. I do not want to go back on what I said about dis-establishment. I do not know where you are going to do it. I suppose you could do it in Russia quite easily. I do not see what we could do here. Mr. Croll, you cannot say anything too strong for me so far as company unions are concerned. I think they have had their day and they have had their day in court. I do not know of any company unions in Canada now. I have heard that some trade unions have been accused of being company unions but that is a matter of opinion.

Mr. CROLL: I think that section is to be found in two provincial Acts in the Dominion now. I think it is in the Nova Scotia section and also in the Saskatchewan section. I can give you the Saskatchewan section.

Mr. LOCKHART: It is only in Saskatchewan.

Mr. SINCLAIR: What is the difference between your section (6), Mr. Croll and the suggestion of Mr. Lacroix? It is exactly the same thing.

Mr. CROLL: It is a company dominated union and not a trade union.

Mr. SINCLAIR: When you take away certification, when whatever rights and privileges the union get under the Act are removed, all you have got left is an association of employees. Still in our country it is not wrong. We may have company unions and it is not wrong. If they are foolish enough to do that they can go ahead. I think your resolution is exactly on the same plane as the bill to kill the L.P.P. party, to disestablish them. It undoubtedly would be a desirable end result but we simply cannot do it under our set-up.

Mr. CROLL: I do not want to dis-establish anybody's rights, who comes within the four corners of this Act.

Mr. SINCLAIR: These people are not within the Act once certification is removed.

Mr. CROLL: It may be they have no right to once their certification is removed, but I am not sure that is just correct because they can continue on without certification and act in the capacity of a trade union and appear to be a trade union and yet they are a company union.

Mr. SINCLAIR: Whatever bargaining they do cannot be backed up by any official of the Act.

Mr. CROLL: You might have an organization coming within the four corners of the Act.

Mr. GILLIS: You are liable to disestablish the engineers. Under Mr. Croll's amendment engineers who set up their professional associations to bargain for them could be dis-established by the board.

Mr. CROLL: Not if they are not company dominated.

The CHAIRMAN: Order, please. Mr. Croll, is it still your intention to tie up your motion to section 9 or would you prefer to have the committee pronounce itself on the principle involved?

Mr. CROLL: I think it is worth while for the committee to pronounce itself on the principle rather than on the section.

Mr. MACINNIS: That is a good point.

The CHAIRMAN: You have before you the motion by Mr. Croll that the Canada labour relations board shall have power to require an employer to disestablish an employer formed, influenced or dominated organization. Are you ready for the question?

Mr. MacInnis: The chairman's suggestion is a very good one. If we accept the principle then those who do the drafting will insert it where it properly belongs.

The Chairman: All those in favour of the motion will please raise their hands. Those against? I declare the motion defeated. Is subsection 5 of section 9 carried?

Carried.

Section 11 was also allowed to stand for the same reason as the previous one. Shall section 11 carry

Carried.

We now come to section 18 which is referred to at pages 125 to 131 of the minutes and proceedings and evidence.

Mr. Croll: I have no objection to it.

The Chairman: Is the section carried

Carried.

Section 19 was allowed to stand for the same reason. Is section 19 carried?

Carried.

That covers our agenda for this morning, gentlemen. The meeting will stand adjourned until next Tuesday morning.

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Canada. Industrial Relations, Standing
Committee on, 1947/48

SESSION 1947-48
HOUSE OF COMMONS

STANDING COMMITTEE
ON

INDUSTRIAL RELATIONS

MINUTES OF PROCEEDINGS AND EVIDENCE [and reports]
No. 9

Bill No. 195—The Industrial Relations and Disputes Investigation Act

INCLUDING THE REPORT TO THE HOUSE

TUESDAY, MAY 25, 1948

WITNESS:

Mr. A. H. Brown, Chief Executive Officer and Solicitor, Department of Labour, Ottawa.

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1948

REPORT TO THE HOUSE

Wednesday, May 26, 1948.

The Standing Committee on Industrial Relations begs leave to present the following as a

Second Report

Your Committee has considered Bill No. 195, An Act to provide for the Investigation, Conciliation and Settlement of Industrial Disputes, and has agreed to report it with amendments.

A copy of the printed minutes of proceedings and evidence is appended.

All of which is respectfully submitted.

PAUL E. COTE,
Chairman.

MINUTES OF PROCEEDINGS

TUESDAY, 25th May, 1948.

The Standing Committee on Industrial Relations met at 10.30 o'clock a.m. The Chairman, Mr. P. E. Cote, presided.

Members present: Messrs. Adamson, Charlton, Cote (*Verdun*), Croll, Dickey, Dechene, Dionne (*Beauce*), Gillis, Hamel, Johnston, Knowles, Lockhart, MacInnis, McIvor, Maloney, Mitchell, Ross (*Hamilton East*), Sinclair (*Vancouver North*), Skey, Timmins.

In Attendance: Mr. A. MacNamara, Deputy Minister, Mr. A. H. Brown, Chief Executive Officer and Solicitor, and Mr. M. M. MacLean, Department of Labour, Ottawa.

The Chairman filed a letter, dated 5th May, from the Canadian District, American Institute of Electrical Engineers, relative to the exclusion of engineers in Bill No. 195.

Clause 4

By unanimous consent, Mr. Knowles moved,

That Section 4, sub-section (2) (*b*) be amended by changing the period after the word "Act" to a comma, and adding thereafter the following words: "and without restricting the generality of the foregoing, no employer shall deny to any employee any pension rights or benefits to which he would otherwise be entitled by reason only of his ceasing to work as the result of a lockout or strike or by reason only of dismissal contrary to this Act".

And the question being put, it was resolved in the negative.

Consideration was given to Mr. Croll's amendment adopted 18th May, proposing that the following be added as sub-clause (5), viz:—

Upon the request in writing of any employee, and upon request of a trade union representing the majority of employees in any bargaining unit of his employees, the employer shall deduct and pay in periodic payments out of the wages due to such employee, to the person designated by the trade union to receive the same, the union dues of such employee until such employee has withdrawn in writing such request, and the employer shall furnish to such trade union the names of the employees who have given or withdrawn such authority. Failure to make payments and furnish information required by this section shall be an unfair labour practice.

Mr. A. H. Brown was called. He suggested that this provision would be more appropriate if included as an amendment to Clause 6.

The Committee concurred.

Clause stood as carried initially.

Clause 6

Mr. Brown recommended the following as sub-clause 3:

Upon request of a trade union entitled to bargain collectively under this Act on behalf of a unit of employees and upon receipt of a request in writing signed by any employee in such unit, the employer of such employee shall, until the employee in writing withdraws such request, periodically deduct and pay out of the wages due to such employee, to the person designated by the trade union to receive the same, the union dues of such employee; and the employer shall furnish to such trade union the names of the employees who have given and withdrawn such authority.

Proposed amendment carried.

Clause, as amended, carried.

Clause 2 (i) (i)

By unanimous consent, Mr. Skey moved, That the word "or" be inserted after the word "capacity" in line 4.

Discussion followed. By leave, the said amendment was withdrawn.

Mr. Adamson moved that all the words after "capacity" in line 4 be struck out.

On the question being put, it was resolved in the affirmative.

Clause, as amended, carried.

Clause 1

Carried.

Preamble

Carried.

Title

Carried.

Ordered, That Bill No. 195, as amended, be reported to the House.

The Chairman thanked the members for their co-operation, courtesy and attention throughout the sittings of the Committee. The Honourable H. Mitchell and Messrs. Adamson, MacInnis, and McIvor spoke briefly in reply.

The Committee adjourned at 12.20 o'clock p.m. to meet again at the call of the Chair.

J. G. DUBROY,
Clerk of the Committee.

MINUTES OF EVIDENCE

House of Commons,
May 25, 1948.

The Standing Committee on Industrial Relations met this day at 10.30 a.m. The chairman, Mr. Paul E. Cote, presided.

The Chairman: First of all, gentlemen, you have received this morning a printed copy of the brief of the International Nickel Company of Canada which was distributed to you in mimeographed form on the 11th of May. In the second place, I wish to file a communication from the American Institute of Electrical Engineers.

Mr. Croll: What do they say?

Mr. Adamson: Just out of curiosity, are they in favour of incorporating engineeers under the Act or not?

The Chairman: Well, as this was not a Canadian national body I did not make any extensive analysis of it.

Hon. Mr. Mitchell: We have got enough trouble running our own affairs.

Mr. MacInnis: What does it say on superficial analysis?

The Chairman: The writer of this communication is Mr. Geiger of whom we have heard already as an executive of the Radio Engineers Association. This letter is in line with what Mr. Geiger has already submitted to the committee.

Mr. Adamson: He wants engineers included?

The Chairman: Yes.

Hon. Mr. Mitchell: I think he had better take a crack at the Taft-Hartley Act.

The Chairman: Our next order of business, gentlemen, is a request by Mr. Knowles for the reopening for purposes of discussion of section 4, subsection (2) of the bill. I understand that Mr. Knowles has distributed to the members the motion that he wishes to make, but the question now is on his request for leave to reopen the discussion on section 4, subsection (2). I have already ruled that in a case like this he requires the unanimous consent of the committee. Is there any discussion of this before I put the question?

Mr. Adamson: May I say one word? I had not known that the first section of this had carried. I consider it one of the most important sections of the bill—I am speaking purely personally now—and certainly I had intended to move an amendment with regard to the definition of confidential employee. Certainly it was passed without my knowledge, and I was very definitely anxious to do something on that first clause. That is purely my own personal opinion.

The Chairman: You are referring to subsection (1)?

Mr. Adamson: I am referring to subsection (1), yes, of 4. I will be guided by the committee.

Mr. Knowles: May I say again, as I said a week ago, that the sole basis on which I ask the committee to give whatever consent is necessary is that it was impossible for me to be here the day the clause was before us. It happens I am a member of a committee that may have some value or may not, the committee on the revision of the rules of the House under the chairmanship of Mr.

Speaker. It was holding a meeting that day, and I simply had to be there. I had thought that clause might not be reached that day. That is the only reason. I asked it on the basis of courtesy.

Mr. LOCKHART: I think we want to be fair to every member of the committee. There may be other sections where it may be felt that they should be reopened for reconsideration. Personally I would be in favour of Mr. Knowles being allowed to reopen the matter. We have not seen a copy of his amendment. You said, Mr. Chairman, that we had been furnished with copies. I do not know what Mr. Knowles has in mind. If it is something diametrically opposed to the general principle of the section that would probably alter our opinion, or my own opinion, anyway, but I think if we had a copy of what Mr. Knowles is proposing—

The CHAIRMAN: If you will allow me, Mr. Lockhart, you will find the proposed amendment of Mr. Knowles at page 222 of the minutes of proceedings and evidence. That is the last one.

Mr. KNOWLES: I have copies here, too. I have enough to pass around.

Mr. TIMMINS: I think we will have to set a policy here. My friend, Mr. Dickey asked that section 2 (i) be reopened, and I joined with him in asking that that section be reopened in order that we might consider it, but you ruled that we were not in order, and it was passed by. Now we come to another section and it is asked that it be reopened in order that some new amendments may be considered. I suppose there will be others who will have other sections they would like to refer back to. I think in fairness to those of us who are interested in certain sections we should rule one way or the other. Personally I have not any objection to Mr. Knowles' amendment being voted on but on the other hand if he is allowed to have it reopened I am going to be opposed to it being considered for the simple reason he has had a separate bill in the House last year and again this year, and there are other features. Another thing is the company concerned is not allowed to make representations here, so that it is hardly pertinent we should deal with the matter. I am not speaking of the merits of the matter, but I do think we ought to have a ruling one way or the other as to whether or not we will reopen in respect of these matters.

The CHAIRMAN: Before I give you the floor, Mr. Dickey, if you will allow me, I should like to say to Mr. Timmins that I am trying to follow the ruling which I have given. I have based that ruling on the practice in the committee of the whole House. I think if such a proposition as that which we have before us this morning should come up for decision by the chairman of the committee of the whole House he would have to request the unanimous consent of the committee before reverting to a section of a bill which has already been carried. That is my conviction. That is why I have given that ruling, and now I have to abide by the ruling which I have given.

Mr. DICKEY: That is more or less what I want to say in fairness to you, that you had turned down my motion on the principle of unanimous consent, and in that instance unanimous consent was not given, presumably for very good reasons. I felt personally it was somewhat capricious, but in any event there was objection by certain members of the committee to reopening and unanimous consent was not given. If the committee wants to give Mr. Knowles unanimous consent I am certainly not going to stand in his way, but it may be that some other members of the committee will want to reopen other sections and will ask for unanimous consent, and I hope if that is the case the same courtesy will be shown to them as was extended to Mr. Knowles.

The CHAIRMAN: Are you ready for the question, gentlemen? Is there any opposition to the request by Mr. Knowles, any one opposing his request? Mr. Knowles, you have the floor.

Mr. Knowles: Mr. Chairman, as the members of the committee know I have been interested for some time, and many others are similarly interested, in protecting the pension rights of railway employees and others who might in the future be involved in a strike or a lockout. You all know that my interest in this matter stems from the experience of the employees of the Canadian Pacific Railway who were involved in the Winnipeg general strike of 1919. However, I wish to make it very clear, and I am sure that every lawyer in the committee will back me up, that what I now propose has absolutely no retroactive effect, has absolutely no bearing on the case of the men of 1919. My attempt now is to prevent that same sort of experience from being repeated in the future.

Mr. Chairman, you and the members of the committee are all aware of the fact that I have tried on two occasions to effect this kind of protection by means of a private member's public bill in the House. Last year that bill, Bill No. 24, was not given second reading, but rather the subject matter thereof was referred to this very committee. We had some discussion of it and passed a pious resolution to the effect that the principle commended itself to us but, of course, we were unable to take any other action. However, we did have before us the Canadian Pacific Railway, the Canadian National Railways and the New York Central, the Minister of Transport, and the representatives of the Railway Brotherhoods, all of whom gave their views with respect to that bill.

I want to come back in a moment to some of the objections that were raised at that time, along with other objections that have come up again this year. A few weeks ago you will recall I presented another bill this year, Bill 6, which is the same as Bill 24 of last year. We had a discussion on it in the House for one hour, and it is now down near the bottom of the list. The objections that were made in the committee last year were in part repeated in the hour's discussion we had in the House the other night. I have sought by means of this amendment to section 4, subsection (2) (*b*) of Bill 195 to meet literally all the objections that have been raised against my other bill. May I take them seriatim.

In the first place there was no objection I was glad to have brought out. Mr. Maybank brought this out in the House, namely, if this is a good idea why restrict it only to railway employees? Why not extend its protection to as many employees as possible? In other words, Mr. Maybank said in the House on the 4th of May, and others said last year, and in this committee, and others have said from time to time, that this is the kind of thing that ought to be not in the Railway Act but in the federal labour code. So I am very happy to meet that objection and propose that instead of Bill 6, which I would be glad to withdraw, that we write this provision into the labour code.

On the other hand, there were some negative objections, and the most pointed and persistent one was made by Mr. Arthur Smith of Calgary West, an objection which I fully understood but felt it difficult to meet in my Bill No. 24 or my Bill No. 6. I am able to meet it categorically in this amendment. Mr. Smith's objection to my Bill 6 was that it seemed to provide protection of the pension rights of railway workers even if they were out on an illegal strike, even if they were out on a sympathetic strike. Whatever I may think about that I had to face Mr. Smith's objection, and there are others in the committee who have that objection. I felt it was impossible to meet that in the terms of Bill 6 because of an illegal strike not being defined, but when you come to try to write this protection into the labour code it is quite a different matter and that objection is quite easy to meet. My suggestion is that if we provide protection of the pension rights of those out on strike under Bill 195 then we provide clearly only for those who meet the conditions of Bill 195. In other words, if you write this amendment into Bill 195 it protects the pension rights of people who go on strike only if they go on strike after they have met all the conditions of Bill 195 or only if it is a legal strike. In that case, it would not help the strikers if their situation were identical with the situation of the C.P.R. employees in 1919. Theirs was a strike which was entered upon against the wishes of their superior officers. Theirs was also a sympathetic strike.

I submit I have gone all the way in meeting Mr. Smith's objection and I think his colleagues on this committee share that objection; perhaps others share it as well.

Now, the other major objection to bill 24 of last year was that stated by Hon. Mr. Chevrier on behalf of the pension fund of the Canadian National. It was also stated by the Canadian National, by the Canadian Pacific and by the New York Central. Their objection was that my bill went further than strikes and lockouts and provided for the protection of pension rights in the case of dismissal followed by reinstatement. I think the members on the committee last year will all remember the argument which the railways advanced, that they now reinstate some men who have lost their rights on the railway without reinstating their pension right. I do not like the argument, but I am stating it. The argument was that, in some of these cases, if the company knew that on reinstating a man they would have to reinstate his pension benefit they would not reinstate him because it would upset the actuarial soundness of the plan. My present amendment does not bring that in at all.

I think, Mr. Chairman, I have covered the three major criticisms which have been made of my previous proposal: (*a*), Mr. Maybank being the spokesman for it, that it did not go far enough in that it covered only railway employees whereas it should cover all employees who come under federal jurisdiction; (*b*) there were objections made most pointedly by Mr. Arthur Smith that the protection should be limited clearly to a legal strike; (*c*) there were objections by the railway companies to the effect my bill went too far in respect of reinstatement following dismissal. Having stated that, I feel my amendment in its present form meets all these objections, may I say a word or two about it on the positive side.

My proposal is that this be effected by amending section 4 which deals with unfair labour practices and, in particular, that it amend subsection (2) (*b*) which reads as follows, abbreviating it;

> No employer shall impose any condition in a contract of employment seeking to restrain an employee from exercising his rights under this Act.

Now, I would point out that in the case of one company—I will mention the Canadian Pacific Railway because I know the situation there—if a person becomes an employee of the Canadian Pacific Railway under the age of 40, he must become a member of the pension plan. It is compulsory for all those employees under the age of 40. I am glad of that. I am not objecting at all, but I am pointing out that is one of the conditions of employment with this particular company. No doubt it is true of other companies as well which will come under federal labour jurisdiction. But also, in the Canadian Pacific pension plan, there is still the old clause 8 (*a*) which leaves it optional with the pension board which is 4 to 3 company and employees, to cut people off their pension right because of participation in a strike. It does not say it will be done. I hope, in society, we have moved such a long distance forward it would not be done under any condition, but the power is still there as a threat. The men in the Canadian Pacific in particular feel it hangs over their heads and it is a deterrent against exercising their rights under this Act.

Hon. Mr. MITCHELL: You mean the right to strike?

Mr. KNOWLES: The right to strike after they have complied with all the provisions of this Act. I am not trying to make any case for a sympathetic strike or an illegal strike.

Hon. Mr. MITCHELL: You are making a pretty good case for it.

Mr. KNOWLES: Any kind of strike? I am glad to know the minister thinks I could make a good case if I were seeking to do it. I know the temper of this committee. I am trying to get this committee to do something which practically all members have said they want. Practically all members have agreed with the principle of the legislation I sought to introduce on other occasions. They have made certain objections and I contend I have met them all. What I am asking for is implied in section 4, subsection (2) (*b*). I admit an employee's organization might have a difficult time establishing that in court, but it is implied.

> No employer shall impose any condition in a contract of employment seeking to restrain an employee from exercising his rights under this Act.

One of those rights is the right to strike after you have complied with all the conditions laid down in this Act.

If any employee of the Canadian Pacific knows it is possible for him to lose his pension rights if he goes on strike after complying with all the provisions contained in this Act, I submit that has the effect of restraining the employee from exercising that right. I have had a good many letters from railroad lodges recently and also last year when there were strike votes being taken with regard to this very matter. It is a deterrent. Some members might think that is a good idea, but it is hardly consistent with our passing an Act which does provide very definite rights.

My proposal is very simple. I contend it is implied in section 4, subsection (2) (*b*). I simply suggest we add these words,

> And without restricting the generality of the foregoing, no employer shall deny to any employee any pension rights or benefits to which he would otherwise be entitled by reason only of his ceasing to work as the result of a lockout or strike or by reason only of dismissal contrary to this Act.

I ask you to note the very definite limitations which circumscribe that protection. This protects only those rights to which the employee is otherwise entitled; in other words, only those rights which he earns by meeting all the conditions of the pension plan. They are protected only when he ceases to work as the result of a lockout or strike and only when he is dismissed contrary to this Act. If an employee is dismissed properly within the provisions of this Act, he does not get the protection. If an employee puts himself beyond the pale of this Act by going out on a sympathetic strike or striking before the conditions of this Act are met, I submit he would not get the protection of this clause. If any members have any doubts on that score and feel it would be clearer if after the words, "any lockout or strike", some words were added to the effect, as provided in this Act, I am perfectly willing to accept that. I believe that is implied anyway. If Mr. Lockhart feels that has to be put in, I shall be glad to put it in. The only reason I did not do so was to keep the wording simple.

I may say I consulted the highest authority around this building when it comes to drafting legislation. You will note, also, those words are taken from another place in the Act itself. On page 3 of the bill, subsection (2) reads,

> No person shall cease to be an employee within the meaning of this Act by reason only of his ceasing to work as the result of a lockout or strike or by reason only of dismissal contrary to this Act.

Now, the concluding words of my amendment are precisely those words. I am willing to submit to any change in the wording any member feels is necessary to make it definitely conform to what the committee wishes. However, I do submit I have met the objections which have come from all sides. I have boiled this down to the basic principle which all members have said they support.

Mr. McIvor: I should like to ask a question. If this amendment is not passed, is there anything in the Act which will protect men and allow them to have their pension if they go out on strike? If these men do go out on strike, do they lose their pension?

Hon. Mr. Mitchell: Mr. Chairman, that is the point. Mr. Knowles says this whole question was raised by an illegal strike in Winnipeg in 1919. I knew some of the actors in that show. I know some of the directions given by the trainmen to members of their organization. I know the steps which were taken by that organization because they broke their contractual obligations. They were prepared to bring men in to take their places. I still go back to what I consider the fundamental point in this type of legislation. I do not think you should try to write into the law something which is taken care of by collective bargaining.

It may be all right for a rich corporation like the C.P.R. or the C.N.R. which is backed by the state, but you cannot guarantee the pension rights of these people right across the board after a lockout or a disastrous strike because the industry may go bankrupt in the process; that has happened quite often.

Now, I think this is the soundest thing to do. The C.P.R. and the C.N.R. because of their experience, put all the necessary money into the fund to pay pensions. You have a pension fund which is administered jointly by the railways and their employees. I consider that to be the best way to administer a pension fund. I think this idea, Mr. Chairman, of writing into legislation things which are normally covered by negotiation and collective bargaining is bad legislation; that is my sound view. I am convinced of that. I should not like to lead these working people up a blind alley and sandbag them. I am not saying my honourable friend is trying to do that. I should not like to guarantee them something by law which, at the time it is placed in the statute books, you know you cannot guarantee them. I think it is far better for the people concerned to sit down and work out these different kinds of pension schemes, some on a contributory basis and some on an un-contributory basis.

Let me say this: I think we are rendering a disservice to the working people of this country by the passage of such legislation. I believe that for this reason; faced with legislation of this kind, I think the average employer would be a little diffident about establishing a pension plan when he knows he is tied up by law, even if he has a disastrous strike or a lockout. I think he would be very diffident towards establishing a plan of that description.

Take the case of the Ford people who worked out a pension plan in connection with that great industry in the United States and Canada. The employees, in their wisdom, turned it down. It was going to be administered jointly by the employers and the employees. I think that is the soundest method of working out a pension plan, with the employers on one side and the employees' organizations on the other.

Mr. MacInnis: I just want to say a very few words in support of the amendment. I am sorry that the minister gave it a wrong twist. There is nothing in the amendment moved by Mr. Knowles to indicate, in the slightest way, we are guaranteeing pensions under all circumstances. There is absolutely nothing at all to indicate that and it is the most far-fetched argument I have heard during the discussions in this committee which, by the way, were carried on on a very high plane.

The amendment provides for protecting the rights to pension in case of a strike. Well, a strike under this Act is a legal strike as is made quite clear in section 21 of this Act which provides the conditions under which a strike may take place.

What Mr. Knowles is trying to do is to make sure there will not be other factors injected which would constitute an unfair labour practice. After the employees have fulfilled all the conditions, an employer should not be able to say, "If you go on strike now you will lose your pension rights." Surely, an employee who is put in that position because of his pension rights is much better without a pension. Perhaps I should not say this. In any case, it has not much weight since I have not the legal training to make it important, but I believe the section as already drafted indicates that if an employer were to even suggest you would lose your pension rights if you went on strike it would constitute an unfair labour practice under section 4 of the Act.

In order to make sure or, as a lawyer would say, to use an abundance of caution, we should include this section. It is very simple. Let us be reasonable about it. The section means exactly what it says. It comes within the terms of this Act and the terms of this Act make provision for a legal strike after the employees have complied with the provisions of the Act. The employees are then on a legal strike and there should be no other prohibition at all.

Mr. CROLL: Mr. Chairman, I think it has been covered. It strikes me there is no question but that the bill provides for adequate facilities for anyone to strike if he complies with the Act. There is no question at all but that lockouts are illegal. Now, there is a third question, the question of dismissal.

I have just been looking at section 40 of the Act which provides for reinstatement at such date as, in the opinion of the court or judge, circumstances may warrant. Now, under those circumstances, subsection (*b*) of section 4 means exactly what this section intends to convey. The only thing it does, I agree with Mr. MacInnis, is to clarify it and tie it down. Once upon a time, we bargained for wages and hours and employment; today, one of the things for which we usually bargain is a welfare fund or a pension fund. It is becoming part and parcel of the contract or of the agreement; sometimes it is on a contributory basis and sometimes on the non-contributory basis, but it is far more general than people ordinarily assume. It applies to small as well as large industries. It is one of the inducements to employees to go into an industry. Most of them will want to know where they are headed for and what they have to look forward to in ten or twenty years time. If we can in any way clarify their rights—and I think they are all there in subsection (*b*)—I am all for it. However, I think this is well covered under the Act and it can well be construed in the four corners of this Act. I do agree with Mr. Knowles that his amendment does clarify this matter, and it expresses in one paragraph exactly what this Act expresses in the whole. I do not see any reason why we should object to it.

Mr. JOHNSTON: Does the minister agree with Mr. Croll that it is covered by subsection (*b*)?

Hon. Mr. MITCHELL: I do not think you can give a guarantee.

Mr. KNOWLES: This is not a guarantee.

Hon. Mr. MITCHELL: I think this is unfair. I am not suggesting that any of the members who have spoken to it are unfair, but I think it is unfair to guarantee something by law that you know very well can not be done under certain circumstances. I think you are giving the average working man the wrong steer when you are doing that. I think I know what is in their minds, it is the big corporations. I have seen so many of these things go on the rocks in the past. Take, for instance, the trade union movement. In my own organization a good many years ago they established an insurance scheme inside the organization and at the conference I said—I don't know why I said it—"You are misleading the membership because this is not actuarially sound." It turned out that way. I sincerely believe I would rather have it operated the way it is in the C.N.R. and the C.P.R. and other industries in this country, where grown-up and honest men sit around a table and administer after an agreement with one another. You cannot guarantee this.

Mr. DICKEY: Mr. Chairman, I should just like to say a word. I agree with the minister in what he has said about the impossibility of enacting in this Act any kind of a guarantee for a pension scheme. I do think both Mr.

Knowles and Mr. MacInnis have put their fingers on the real objection to our accepting the amendment by pointing out the provision of subsection 2 (*b*) of this same section. My approach to this is that we are to all intents and purposes enacting new legislation. The inclusion of a clause in legislation beginning with the words "and without restricting the generality of the foregoing" in certain circumstances such as this, generally is an amendment to old legislation which is attempting to deal with a particular difficulty that has arisen. It seems clear to me that the particular difficulty that Mr. Knowles has in mind—and I think we are all in sympathy with it—is a difficulty that arose in 1919 when this legislation was not even thought of. My opinion is that the rights of an employee who has not participated in anything illegal under this act are fully protected.

Mr. Johnston: Are his pension rights protected?

Mr. Dickey: I would say so.

Mr. Johnston: The committee does not think so.

Mr. Dickey: I would say they are fully protected insofar as this legislation can go without raising difficulties in the minds of people who are bound to be involved, which will, I am quite sure, restrict the expansion of proper plans for the protection of workers, particularly in small industries. Mr. MacInnis made reference to a well-known and well-termed phrase, "abundance of caution". Lawyers sometimes are criticized for applying "abundance of caution" too often and too severely, but I do think it is wise to go carefully. My frank opinion is that due regard to the term "abundance of caution" should be given in this instance to see that we do not spoil an already satisfactory provision of the Act by putting in something that will have a restricting influence to the establishment of a proper pension fund.

Mr. Sinclair: I should like to support this amendment. I find it impossible to agree with the minister. All this does is to protect the rights of men who may be on strike. I would say one of the greatest deterrents an employer could possibly have to restrict the freedom of his men is to say, "You may go on strike, but I will fix you. You will not get your pension". In such a case the man would not go out on strike. The minister suggested that this might result in bankruptcy. I do not think that statement shows a very good knowledge of how the ordinary company pension scheme works these days. The money is not put into the consolidated revenue of the company, but in a separate trust fund. This is so, even in companies of a national scope. Each year out of their revenue they put aside the necessary money for the employees' pensions. A long strike may put a company in a state of bankruptcy, but not the trust fund. In connection with most of these small companies, these funds are invested in Dominion government annuities by those men. After listening to Mr. Knowles this morning, I would say that his explanation has gone a great way in meeting the objections which were made last year. I think this amendment states very clearly what is really meant and it will give the men a better idea of what their rights are. If you are going to say that this should be left to the good judgment of the employers and employees, let us go to the full extreme and say, "Let us not have anything here at all".

Hon. Mr. Mitchell: I appreciate what you say, but in my judgment—and it is a matter of judgment, which I am frank to admit—instead of rendering a service to the working people in this country you would be rendering a disservice by adopting this amendment. I gave my reasons for taking this view. In some countries of the world in connection with bargaining conditions, the bargaining is done by the state. That is the danger in my judgment—getting the state mixed up in matters of this kind. The Wagner Act swung too far to the left and the Taft-Hartley, in the opinion of some people, swung too far to the right. Then you have what took place in Queensland in Australia, and now what is taking place in New Zealand. That is why I say there is no substitution for collective bargaining between grown-up men. You cannot pass a law to stop it from raining or to stop a firm from going bankrupt because of an industrial dispute. Somebody will say that that is a club over your head. No one can accuse me of being a friend of the C.P.R., but I think the C.P.R. would not hold a club over anybody's head. Mr. Chairman, that is my view and it is based on what I consider to be taking a long view in the interests of the people whom we are trying to protect under this legislation.

Mr. McIvor: Probably I am putting it too strongly when I say that I know as much about the 1919 strike as does anybody in this committee, but the strike was very popular up to a point until the strike committee made their mistake in going too far. But the thing that has bothered me ever since is that hundreds of men were denied their pensions after this strike, and, it seems to me, through no fault of their own except that they voted for the strike. If the minister says that this applies from now on, that makes a big difference. We are not going back. I have some reason to think that the big corporation has not always a lot of heart in it for the men with the small income. That is my attitude, and if there is anything in the Act to protect the men who go out on strike to receive their pension, that is all right; but if there is not, then I would support this amendment because it clarifies a good deal.

Mr. MacInnis: I should like to discuss two or three points that have been raised in respect to this motion. It has been suggested that to put in this amendment we might be restricting the section as it now stands. I would say that the very wording of Mr. Knowles' amendment prevents anything of that kind. It makes it wider, "without restricting the generality of the foregoing." The last time the Minister of Labour was on his feet he seemed concerned about the state becoming, in time, involved in collective bargaining. There is nothing in that argument. What are we doing now except bringing the state into collective bargaining? If a situation were to develop tomorrow to necessitate the state coming into it to a greater extent, then the Minister of Labour would bring that legislation here. If he did not do it that way he would do it by order in council. That is what he is there for. Now, judges when dealing with a case of this kind will try and get the opinion—I think it is usually done—of the legislators. From the statements of the minister this morning it would seem implied that he does not believe that employees who go out on strike have any claim to their pension which means in other words that the employer may hold this as a club over them.

Mr. Croll: I do not think he said that. Let us not get on record something he did not say.

Mr. MacInnis: I am quite willing to leave it to the record. If he did not say that he came so close to it that it could be read into it.

Mr. Croll: That would be unfortunate.

Hon. Mr. Mitchell: Mr. Chairman, I can clear that up right away. That was not my intention and I am sure my good friend Mr. MacInnis knows that. My friend knows about his own organization in the United States under the Taft-Hartley law. If you want a yardstick for sensible labour relations with regard to both employers and employees, I think this country stands out in bold relief more than any other country. I want to say, Mr. Chairman, that no one wishes for the establishment of this pension plan more than I do myself, but Mr. MacInnis will remember when his organization would not think of taking a pension plan of an employer. They said, "We will establish our own pension plan and our own insurance plan. Give us the money in the pay envelope. That is where we want it." But, to guarantee, which this does in effect, everybody a pension for life—

Some Hon. Members: No, no.

Hon. Mr. Mitchell: All right, give me a chance now. To do this would be unfair to the average employee. That is my view and I hold it strongly. You cannot write into legislation something that should normally be directly negotiated between employee and employer. It is bound in the long run to act to the disadvantage of the trade union and the members of the trade union. That is as clear as history itself. It is just as clear as your hand in front of your face, and I would rather see us carry on as we have done in this country in the past and leave such matters for discussion between employees and employers.

Mr. Knowles: May I just answer one or two points, and I shall be very cool and calm about it.

Some Hon. Members: And brief too.

Mr. Knowles: Thank you, I shall be very brief. The minister has referred quite often to the well-being and interest of the employees. I think the answer to that is that a good many members have had communications from railroad lodges right across this country, and they know that the railroad lodges want even more—they want Bill 6. I am prepared to settle for this amendment. Secondly, I agree with the minister for the desirability of having free collective bargaining and that it should be done by the employees and the employers and not by the state for them. But we have got to the place where we realize that the state has to do some of the umpiring and lay down some of the rules. This whole Act provides that under collective bargaining you cannot go out on strike unless you have gone through certain conditions. I am now saying that in collective bargaining the pension and rights must not be in jeopardy at all. My third point has to do with the whole question of this amendment supposedly guaranteeing a pension for life or a pension fund. It obviously does not do that at all. Let us boil this down to the simple thing that it does. It does so little I do not think it should occasion this discussion at all. All it does is to make an attempt of an employer to deny pension rights because of a legal strike an unfair labour practice. Suppose an employer does the thing that this amendment says he shall not do. All that happens is he has committed an unfair labour practice, and you therefore make it possible for the employees to try to take their employer to court. It does not guarantee the fund; it does not even guarantee that the employees will win their case when they get to court. As it now stands, if you do not write this amendment in, and the employee organization trys to take it to court under section 4 (2) (*b*) I am afraid, after the intent having been made clear by the minister this morning, that the court would say that it is going a little too far to say it is there and the employees would lose. I that intent is made clear simply by spelling out something Mr. Croll and Mr. Sinclair and some of the rest of us think is all right then the court would be in a position to judge more favourably for the employees, but get it clear that it does not have any bearing on pension funds as such. It merely states that this particular action would be an unfair labour practice and would be dealt with in the same manner as other unfair labour practices.

Mr. Lockhart: I have one brief comment to make. This shows how, by raising hypothetical issues, you get yourself involved. I cannot see where there is any improvement at all. I tried to follow Mr. Knowles' argument as carefully as I could, and I say I am convinced when you start to write these more or less ambiguous, hypothetical things, into a legal document you immediately find yourself in this position where we are disagreeing on details. I certainly do not want to see Bill 195 tied up with a lot of hypothetical stuff, and I think that is the type of thing that is being raised here.

Mr. DICKEY: There is just one small point which has been brought to my mind by Mr. Knowles' last remark. This is going to be a sort of offhand legal opinion, but I should like to point out to Mr. Knowles if his amendment is adopted and is included in the Act, and an employer does something which is in contravention of the Act with respect to pension funds, that offhand I would say that the union, in considering some sort of legal action, would in all probability be advised to proceed under subsection (2) (*b*) rather than under his amendment because it is quite clear that under his amendment what has happened is an unfair labour practice, and the result would be the imposition of a fine, but if they proceed under subsection (2) (*b*) there would be no question of a fine, and if an employee or the union was entitled to any relief it would be relief against the action that has been taken. In other words, the provision of the pension plan which was in contravention of the Act and permitted the employer to act as he did would be held to be ultra vires because of the provisions of section 2 (*b*).

Mr. JOHNSTON: I am getting a little confused now. I listened very carefully to the minister telling us what the intent of the Act was. Then we have had two or three lawyers get up here and say just exactly the opposite. I am becoming more convinced we should adopt this amendment moved by Mr. Knowles for that very reason, for a little clarification. The minister went to some length to say that you cannot write into legislation that which should be done by conciliation, and I recall that the other day he did express the view that he was in very great sympathy with the British method where they do not have a labour code at all. That is what he would like to see, but we have not taken that same attitude here. We have very definitely gone into the field of writing a national labour code. I do not think we can get away from that. Then I was impressed with what Mr. Sinclair had to say here about pension funds being set up as separate funds which would in no way conflict or be affected by a company going into bankruptcy.

Then let us turn to section 4 (2) (*b*). Some of us were a little bit inclined to agree at first that section 4 (2) (*b*) would cover almost any unfair labour practice, but Mr. Dickey has said now that he thinks that section 4 (2) (*b*) is more inclusive than Mr. Knowles' amendment. There again he is going directly opposite to what the minister himself interpreted section 4 (2) (*b*) to mean. It seems to me that a pension fund, once it is entered into by agreement and the fund is set up, is just as important to the employee as wage rates are. I do not believe that either wage rates or pension funds should be interfered with on behalf of the company once an employee is acting fully within his rights as set out by this Act. This Act gives him the right legally to go on strike. This Act definitely defines what a strike is, and as long as that man is complying with this code passed by this government then I do not think any company has the right to interfere with the privileges set down in this Act for the employee, or to interfere with the pension rights that have been entered into by agreement between the company and the employee.

The minister said, "Well, you might put this amendment into the Act and it would result in the refusal of companies to build up pension funds". It seems to me that there again that would be a matter of agreement between the company and the employees, and the employees will insist that a pension fund be set up. Once that pension fund is set up and your agreement is concluded then, of course, they are acting within the confines of the Act and of this amendment. Once the company and the employees agree to abide by the terms of this Act then each of them is compelled to carry out the terms as outlined in the Act. I cannot see for the life of me why there should be any objection to this, and I have listened very carefully to both sides and have tried to come to a conclusion. My conclusion is that it would be of great assistance both to the companies and to the employees to have this amendment put in here which clearly defines the rights of the employees in regard to a pension fund. For that reason I must support it.

Hon. Mr. MITCHELL: I just want to say a couple of words.

Mr. GILLIS: You will start the argument all over again.

The CHAIRMAN: Are you ready for the question? It is moved by Mr. Knowles that section 4, subsection (2) (*b*) be amended by changing the period after the word "Act" to a comma, and adding thereafter the following words:

> And without restricting the generality of the foregoing, no employer shall deny to any employee any pension rights or benefits to which he would otherwise be entitled by reason only of his ceasing to work as the result of a lockout or strike or by reason only of dismissal contrary to this Act.

All those in favour of the motion will please raise their hands? Those against? The motion is defeated.

I understand that Mr. Arthur Brown, the solicitor of the department, wishes to make some recommendation as to the phraseology of the new subsection (5) of section 4 which the committee has adopted. I would ask Mr. Brown to give us his views.

Mr. BROWN: Mr. Chairman, I would suggest that the language of Mr. Croll's amendment be modified to conform to the language of the Act itself. I also suggest that the provision might better be inserted as subsection (3) of section 6 rather than in section 4 because it is a matter dealing with union security, and section 6 does deal with matters of union security. With the change in the language that I would suggest the subsection would read this way:

> (3) Upon request of a trade union entitled to bargain collectively under this Act on behalf of a unit of employees and upon receipt of a request in writing signed by any employee in such unit, the employer of such employee shall, until the employee in writing withdraws such request, periodically deduct and pay out of the wages due to such employee, to the person designated by the trade union to receive the same, the union dues of such employee; and the employer shall furnish to such trade union the names of the employees who have given and withdrawn such authority.

Those are purely drafting changes and do not change the substance.

The CHAIRMAN: Is the committee agreeable to this recommendation?

Mr. CROLL: I agree.

The CHAIRMAN: Is it carried?

Carried.

We are now on section 1 of the bill. Is section 1 carried?

Mr. DICKEY: My request the other day had to do with section 2 (i) (1).

Mr. JOHNSTON: That was carried.

The CHAIRMAN: Have you any request to make?

Mr. DICKEY: My request the other day was that section 2, subsection (i), clause (1), be opened for redrafting for the purpose of a full discussion of all the points involved. I had no intention at that time, nor have I now, of moving an amendment. I understand that Mr. Adamson has an amendment which he would like to move. I did want to reiterate my opinion that this clause (1) was carried under a misapprehension by some members of the committee as to exactly what was happening, and it would be to the advantage of everybody to see that any matters arising under that clause are fully discussed, and the most thorough consideration given to them by the committee, because after all we have tried to do that throughout our consideration of this bill.

The CHAIRMAN: I may say there is something particular about your request that we have to bear in mind, that your request, in exactly the same wording as you have placed it today before the committee, has already been turned down by the committee, so would it be in order to reconsider a request which has already been decided on by the committee? I am just pointing that out.

Mr. TIMMINS: It was turned down at that time because a similar request had been turned down but now that we have permitted Mr. Knowles' application for reopening I think we have created another precedent, and I think we ought to follow that.

The CHAIRMAN: It was the same committee which acted last time on Mr. Dickey's request.

Mr. JOHNSTON: I do not see how we can reopen the section.

Mr. MACINNIS: I think we ought to be perfectly fair in this. We opened a section today for Mr. Knowles on a specific point for the insertion of a certain amendment to the section which was clearly defined. If Mr. Dickey has a particular point that he wishes to insert in the Act or he wishes to take out of the Act I will be glad to support him, but I do not think we should support him for a general discussion of the Act itself.

Mr. CROLL: May I point out to the chairman that I have looked up the proceedings of Thursday, April 29, when this matter came up, and I asked that it stand. The record so reports at page 86.

Mr. JOHNSTON: It was later passed.

Mr. CROLL: Because I had some objection to make to it, and my notes indicate to me I was going to talk about foremen and people in confidential capacities. I think that is what Mr. Dickey had in mind. Then the matter came up later on and someone raised it and it was passed, and I did not have an opportunity and I let the matter go. That is altogether different from what Mr. Knowles put before us. He never had an opportunity to present it at all, and it was granted to him by unanimous consent. I do not think we can keep going back on this all the time.

Mr. ADAMSON: I had something quite specific to bring up, and it is a very simple matter, although I think it is rather far reaching. It deals with clause (1) of subsection (*i*). Mr. Skey has suggested an improvement on what I had originally suggested which was that the words, "in matters relating to labour relations" be struck out. I will move this if I may, that the word "or" be inserted after the word "capacity" in line 19 of the bill, so that the section will now read:—

> A manager or superintendent, or any other person who, in the opinion of the board, exercises management functions or is employed in a confidential capacity or in matters relating to labour relations.

I do this for the reason I suggested to the committee before, that certain people employed by industrial concerns are entrusted with secret formulas of production, secret methods of production, employed in laboratories or in other ways, and I feel that they should not be included in the bargaining unit. Anybody who is in a very confidential capacity, such as the people I have mentioned, I believe should be excluded.

The CHAIRMAN: Before I allow discussion on this point I should like to seek the opinion of the committee as to whether we should reopen the discussion under this clause.

Hon. Mr. MITCHELL: I think we did it for Mr. Knowles and it is only fair we should allow Mr. Dickey to proceed.

Mr. DICKEY: I would not like there to be any misunderstanding about this. I think it will have to be with unanimous consent. It seems to me in fairness it should be said that the amendment suggested by Mr. Adamson is in effect a very sweeping amendment and will require a very full discussion of all the circumstances involved.

The CHAIRMAN: Is there any opposition to the request made by Mr. Dickey? If there is no opposition to his request then I will invite Mr. Dickey to proceed.

Mr. DICKEY: I am afraid I have explained this two or three times, but I did feel that we should have a discussion on the particular wording of clause (1) of subsection (*i*) of section 2. The thing that I found particularly revealing was that in the discussion of subsection (2) there was a general assumption on the part of practically every member of the committee that certain people in confidential capacities would not come under the Act. That phrase was used on several occasions to myself, people saying it would not apply because they were employed in a confidential capacity or were much too close to the employer, or something of that kind. That may have been true under the legislative provisions prior to this Act, but my view is if clause (1) of subsection (*i*) is passed in its present form that will no longer be true. I think this committee should consider exactly what the position will be under the provision as it stands, and whether or not that is what the committee wants and whether that will make a contribution to industrial peace and to the solution of our employee-employer problems.

It seems to me there are certain people who are employed in various industries in a confidential capacity which is in no way connected with labour relations, and where it is not in the interests of either the employer or the employees' organization to have them entitled to membership in the union. It seems to me that under the section as it now stands any person in the unit will be able to claim membership in the union in spite of the fact that he is employed in some particularly confidential capacity. From the point of view of the union they might consider it would be detrimental to their interests to have them in the union or to have any specific large group of people in this particular confidential capacity in their union. I do feel we should give full consideration to all the circumstances involved.

The CHAIRMAN: Before I give you the floor, Mr. Skey, I would ask Mr. Adamson, since he has given us notice of a motion, to place it before the committee at this time.

Mr. SKEY: To crystallize the discussion I should like to move that in line 19, page 2 of the bill, the word "or" be inserted after the word "capacity."

The CHAIRMAN: Are you ready for the question?

Mr. CROLL: Let us see what it means.

Hon. Mr. MITCHELL: I want to say that we have given a lot of thought to this clause, and we do not know of any better language. What I would not like to do is to exclude large bodies of people who already have collective bargaining agreements. There is always that danger when you make it restrictive. If you put the word "or" in there—and I took a look at this yesterday after somebody suggested it—you will have the supervisors, the confidential employees, and those who are dealing with labour relations. That might be anybody on either side. It might be a trade union secretary, and that wording might exclude him from the Act. I agree that is hypothetical. Take, for example, the conductor of a train who is in charge of a train, or a section foreman out here on the road. He is a foreman but is not a foreman in the accepted sense that one sees in some industrial establishments. I come back to the point again that, having in view the set-up of the board, they are quite capable of saying who are confidential and supervisory employees because of the cross-section of the board, and we should let the board make that decision. I have not any strong views on it except I think it is only fair to the board to give them as much jurisdiction and discretion as you possibly can in this matter. It has worked all right up to now. We have had no difficulty whatsoever in the national field. The only change in the wording from order in council 1003 is that these few words were put on the end, "in matters relating to labour relations." Frankly I do not think there is any danger at all.

Mr. GILLIS: It is all right as it is?

Hon. Mr. MITCHELL: Yes.

Mr. ADAMSON: Does this addition make it more general and easier for the board and give the board a fuller hand in dealing with the things that it does as it now stands? As it stands now it is very restrictive. These extra words make the clause extremely restrictive, and I believe—and I agree with the minister here—that the board should have a freer hand in its dealings. For that reason I support the amendment.

Mr. SKEY: I do not agree with the minister's argument that some people might be excluded by this amendment because, an employee employed by an employer on confidential matters in relation to labour relations is in quite a different capacity to an employee who is a member of a union and carrying on in a confidential position. This would merely be for the board of labour relations to rule one.

Hon. Mr. MITCHELL: What you have to do is a most difficult thing. Under P.C. 1003, it worked admirably. We had no difficulty whatsoever to my knowledge. If you would like us to take the words out for the sake of harmony I would be prepared to do it, but I am still convinced that it is a good section as it is. If you were to put "or" in there, you would run into all kinds of trouble. We can only go in the light of experience of the past, and up to date we have had no difficulty. As I said before, this is the longest continuing board in North America. Nobody has resigned because of a difference of opinion, and both the members and the employers have remained on the board ever since its inception. I am prepared to take the wise judgment of the board established for this purpose.

Mr. SKEY: If the minister is convinced that these people would not be excluded, I would like to withdraw my amendment. When I discussed it yesterday I thought it was otherwise. I would certainly not want this to go on the record or to be even voted on, but I thought I would improve or broaden and strengthen the board's position.

Hon. Mr. MITCHELL: I thought this over last night myself and yesterday afternoon I was of the same opinion as yourself. It is not a question of trying to exclude anybody, but I think "or" makes it more difficult.

Mr. SKEY: I move to withdraw my amendment.

Mr. ADAMSON: As the minister has stated he saw no objection to the working of P.C. 1003, would he take objection to striking out these words, which would unquestionably give the board far wider power? Mr. Chairman, I would move that these six words—

The CHAIRMAN: Before you do that, I should like to know if the committee is agreeable to letting Mr. Skey's motion be withdrawn.

Agreed.

Mr. ADAMSON: Then I move, Mr. Chairman. that these six words, "in matters relating to labour relations" be struck out.

The CHAIRMAN: It has been moved by Mr. Adamson that the words "in matters relating to labour relations" be struck out from clause 1 of subsection (i).

Mr. Knowles: Would the minister give the reason why they were put in.

Hon. Mr. Mitchell: They were asked to be put in, but frankly, in my opinion they do not mean anything.

Mr. Croll: Is this not what it means? If you have an employee in a confidential capacity and he appears before the board and the question is asked about a bargaining agency the employer, who has an opportunity to appear before the board, says, "No, this is a confidential person." He says that it is the secretary or somebody else. Now, on the other hand, in respect to "matters relating to labour relations", that refers to a new group which has grown up in this country in recent years, and refers to personnel men who devote their time to labour relations. You exclude them and there is good reason for that, but if you strike out the words "relating to labour relations" it would mean exactly what it would have meant if Mr. Skey's motion had carried. I asked about these words when they originally came in. I think they are very important because they recognize the people in the real confidential capacity—the personnel men in charge of labour. You exclude them for a good reason. On the other hand, if you leave open the matter of confidential capacity you may include the office staff. They may come before the board and claim that the office staff is a confidential staff.

Mr. Timmins: It seems to me that by the words "or is employed in a confidential capacity" you are leaving the board free to use its discretion and judgment as to the sort of people that should be excluded from bargaining agencies under the Act. When you put in the words "in matters relating to labour relations" you make it far more specific and you cut away from the board its general authority in respect to decisions as to who shall and who shall not come in. It seems to me that we are restricted, and having regard to the fact that P.C. 1003 worked very well for quite a long time and we know exactly what it means, I think we ought to leave well enough alone.

Mr. Dickey: I just want to say that I am prepared to go along with the minister. I wondered why these words were added, but if P.C. 1003 has worked well, and the minister says it has worked well, unless there is some very cogent reason why this restriction is necessary in the Act, I am certainly prepared to go along with the minister.

Mr. MacInnis: Mr. Chairman, I just want to say a word here. I imagine that these words were put in after very considerable discussion in view of the way the section was in P.C. 1003. I should like to draw attention to the beginning of section (*i*) and the definition of employee:

> A person employed to do skilled or unskilled manual, clerical or technical work.

As to the who would ultimately be excluded because of being in a confidential capacity would depend largely, I think, on the request of the employer that certain persons should be excluded. Now, then, the employer could take the position that any stenographer that took a letter from the manager is in a confidential capacity and consequently is not entitled to the protection that she or he can get from the organization. Well, I think that would be carrying the definition of confidential capacity too far. I think as it is now it will leave it to the board to decide, and I think we would be well advised to leave it as it is.

The Chairman: Are you ready for the question?

Hon. Mr. Mitchell: Before the question is put I want it clearly understood, Mr. Chairman, that I do not care which way the motion goes. I do not think it makes much difference. That is my own view. If I thought that this was going to restrict the organization I would leave it the way it is. If I were an employer the only person I would not let them organize would be my secretary.

I would let them organize everybody else. But I do not think Mr. Chairman, that whatever language is used it will make much difference. That is my conviction.

Mr. ADAMSON: As to my amendment, I want to reply to something Mr. MacInnis has said. First of all, I think it worked very well in PC 1003 with these words in it. I disagree, however, with the minister because I think they put a very restrictive meaning to the clause, and I think that is unwise. I think if the boards are fair—and we have heard that the boards are fair—that they will have a freer hand and be able to administer the Act better with this clause deleted. Now, with regard to the secretary dealing with confidential records and being considered as a confidential employee, he may have knowledge of the financial structure of the company which may be most harmful. I also think that people who are engaged in fire protection should be excluded, and, in cases where companies have hydro electric development, I think the people in charge of the switches that provide the continuity of power should be excluded from this Act.

Mr. KNOWLES: As this argument goes on it seems to me not to remain a matter of indifference but that it becomes important to leave the words in. Let me put it this way. It says: "matters relating to labour relations". Now, the things these personnel men do are matters in issue between employees and employers, and I can see the logic in such persons not being included in the collective bargaining units. However, as to those matters to which Mr. Adamson has referred —company secrets and so on—I would say that you do not protect the company secrets by keeping those who know the secrets out of any particular organization. Those secrets depend on the discreteness of the employees themselves, and there are other ways for employers to deal with such matters. What Mr. Adamson suggests in this Act is to keep out as many people as possible. The purpose was not that; it was to provide for the protection of as many people as possible. I think that this idea of certain confidential people being kept out applies only with reference to the matters that are at issue between employees and employers, and these are matters relating to labour relations.

The CHAIRMAN: The question is this: Moved by Mr. Adamson that the following words be deleted from clause 2 section (*i*) subsection 2: "matters relating to labour relations." All those in favour of the motion please raise their hands. Those against.

The motion is carried.

Section 1. Is that section carried?
Carried.

Is the preamble carried?
Carried.

Is the title carried?
Carried.

Shall I report the bill as amended?
Carried.

Gentlemen, I wish to add a few observations at this time. This has been a committee where the attendance has been the largest in the experience which I have had since sitting in this House. The average attendance of the committee has been twenty-five out of a total number of thirty-five members.

Mr. TIMMINS: That is because we have had a good chairman.

The CHAIRMAN: I wish to congratulate you gentlemen and to thank you very sincerely for the co-operation you have given me and the friendly way you have handled the discussions throughout the sittings.

Mr. McIvor: I should like to express appreciation to the chairman of this committee and to his helpers, and also to the Minister of Labour and his officers. They have given us a good deal of information and in a way which even I could understand. This committee has been a real treat to attend.

Mr. Adamson: I should like to second Mr. McIvor's motion and I want particularly to congratulate the chairman in having kept the matters before the committee relative to the bills. I have seldom sat on a committee where the arguments have been so relevant to the case at issue.

Mr. MacInnis: I would be very glad to go along with Mr. McIvor so far as the chairman and his assistants are concerned. This was a very interesting committee and the discussions were emphatic. They could easily have been more emphatic and less constructive had it not been for the nice easy handling of the chairman. This is the second opportunity I have had of being on a committee of which Mr. Cote was the chairman, and I think they could very well give him the position of permanent chairman of standing committees.

Hon. Mr. Mitchell: I was not going to say anything. I have been the corpse that you have operated on most of the time, but I join my good friend the member from Fort William (Mr. McIvor) and my good friend Mr. MacInnis in their motions. I think the way that this committee has conducted itself exemplifies the common sense of our people as a whole. We have discussed our questions without unpleasantness or hard feelings, and I think it can be said of us, Mr. Chairman, that we have endeavoured to lay down a document that will have the purpose of stabilizing labour relations between employer and employee. I think it may be said of us in the years to come that we built this better than we knew. I should also like to pay tribute to all the employee organizations and to the employers in the suggestions they have made to us. Ours is the form of government where we are governed by discussion and everybody has the right to go to the foot of the throne. I think we have embodied what I consider to be the most constructive suggestions put by both sides. I want to thank you, Mr. Chairman, and the members of this committee for the very kind way they dealt with the Minister of Labour during the discussions of the last five weeks.

Some Hon. Members: Hear, hear.

The Chairman: Gentlemen, this concludes our hearings.

The committee adjourned.

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